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IN THE

SUPREME COURT OF THE UNITED STATES

..... Term, 198..

No.....

Margaret Batterham Waters, Appellant

vs.

Conley Henderson, Fred Henderson,

Glenn Henderson, Paul Henderson,

Blaine McMahan, Oscar Dunn, Appellees

JURISDICTIONAL STATEMENT

Margaret B. Waters,

Pro se, Appellant,
Route 12, Box 413,
Maryville, Tenn. 37801

Charlie R. Johnson,

Counsel for Appellees
148 Court Avenue,
Sevierville, Tenn. 37862

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QUESTIONS PRESENTED

Is any decision valid when rendered by a court in which the judge of the court is also a party's attorney? i.e. Does the due process clause of the Fourteenth Amendment prohibit a judge from practicing law?

Can a Tennessee court ignore the constitutional requirement that it grant Full Faith and Credit to a federal court's adjudication of lack of title in a party's claimed predecessor to real estate?

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A Sevier County Chancery Court judgment 10 pages holding that the decision of Cause No. 8099, Earl R. Hendry, chancellor, Earl R. Hendry, attorney for prevailing parties, was valid and res judicata of all issues.

B Tennessee Court of Appeals opinion 7 pages affirming. The court agreed with the chancery court that a decision rendered by a court in which the judge of the court was also a party's attorney was valid. Further stating: "Moreover we are frank to say we can see no real distinction...between a chancellor or a judge trying a case in a court over which he presides than in any other court of the State."

C Tennessee Court of Appeals opinion overruling petition to rehear. 1 page

D Motion of faculty members of Vanderbilt University School of Law to file brief as amici curiae. 2 pages stating: "Their interest in the case is that it raises issues which are important to the administration of justice and to the practice of law in Tennessee."

E Order denying motion to file amicus curiae brief 1 page Robert E. Cooper, justice

F Tennessee Supreme Court order denying application for permission to appeal 1 page Per Curiam

G Tennessee Supreme Court order denying permission to rehear 1 page Per Curiam

H Jurisdictional letter and points and authorities 3 pages questioning the jurisdiction of the Court of Appeals to adjudicate the constitutional issues involved.

I Notice of appeal to the United States Supreme Court 1 page

J Copy of questioned deed 1 page on which Christine Merry Smith is the purported grantor of the Waters farm, Blaine McMahan, trustee of Sevier County, the grantee.

K Copy of Christine M. Smith's filed affidavit rescinding deed 1 page in which she stated that she did not have any right, title or interest in the litigated property and had never knowingly signed a deed conveying it to anyone.

L Copy of threat note 1 page received by appellant in the mail enumerating four (4) successfully carried out reprisals including burning of her car, ousting her from Sevier County housing and ending with a threat on her life if she did not forget the farm

and "get out of Tenn."

M Copy of Abstract of Title 1 page showing chain of title to Margaret B. Waters farm and to the noncontiguous Don Waters "stay place."

N Sections of Tennessee Code Annotated and Rules of Tennessee Supreme Court 1 page

TCA 17-105, Practice of law. No judge or chancellor shall practice law...except in cases in which he may have been employed as counsel previous to his election. Derivative Acts 1851-1852.

TCA 29-301, Public officers prohibited from practicing. Judges and chancellors are prohibited from practicing law in any of the courts of this state. Derivative Acts 1817.

TCA 17-406, Rules of conduct for judges to be in compliance with the code of judicial ethics as promulgated by the American Bar Association but not otherwise.Acts 1953.

Rule 43 of Tennessee Supreme Court adapting the code of judicial conduct of the American Bar Association. Canon 5F Practice of Law. A judge shall not practice law.

OPINION BELOW

The order of the Tennessee Supreme Court, entered on February 11, 1981, motion for rehearing denied on March 16, 1981, the opinions of the Chancery Court of Sevier County, Tennessee, and of the Tennessee Court of Appeals are set out in the appendix hereto.

JURISDICTION

This action making a temporary injunction permanent, based on a prior proceeding in which the judge of the court was also adversary attorney, draws in question:

(a) The validity of Tennessee Code Annotated 17-105 on the grounds that the statute is repugnant to the due process clause of the fourteenth amendment of the Constitution of the United States. This statute permits a judge or chancellor to perform any of the functions of attorney or counsel in any of the courts of Tennessee om cases in which he may have been employed as counsel previous to his election.

(b) Can a state court refuse to give full faith and credit to the later proceedings of a Federal District Court holding that the adversary parties' alleged predecessor in title had no right, title or interest in the subject real estate?

These federal constitutional questions were timely raised by appellant in the Chancery Court and have been continuously raised on appeal.

On September 26, 1979, the Chancery Court of Sevier County, Tennessee, held against appellant, ruling that the final judgment, October 20, 1972, Sevier Chancery Cause 8099, Earl R. Hendry, chancellor, Earl R. Hendry, attorney for Henderson et al., was res judicata.* It also voided the rescission of deed filed by Christian Merry Smith on May 14, 1977, in which she denied she either had or claimed any right, title or interest in the Waters farm.

The Court also found that the Los Angdes Federal Court's proceedings, holding that Christine M. Smith had no right, title or

* Appendix A3-9

interest in any Tennessee real estate, were not material and refused to give full faith and credit to them.*

On October 3, 1980, the Court of Appeals affirmed, holding that TCA 17-105 was valid and that:-

> We can see no real distinction...between a chancellor or judge trying a case in a court over which he presides than in any other court of the State.

A timely petition for rehearing, filed by appellant on October 10, 1980, was overruled by the Court of Appeals on October 21, 1980.

On November 19, 1980, appellant filed her application for permission to appeal to the Tennessee Supreme Court. On December 23, 1980, two faculty members of Vanderbilt School of Law filed a motion to file brief as amici curiae, in part stating:-

> Their interest in the case is that it raises issues which are important to the administration of justice and to the practice of law in Tennessee...(and) that the opposing attorney should not have been allowed to continue to represent his clients after he had been appointed a judge.*

The motion was denied on January 30, 1981. Appellant's application was denied on February 2, 1981.

A timely motion for rehearing and a letter* regarding the exclusive jurisdiction of the case with the Tennessee Supreme Court was denied by the Supreme Court on March 16, 1981, stating:

> On considering the petition to rehear and briefs filed in this case and the entire record, the petition of Margaret B. Waters is denied. Per Curiam.

Notice of appeal to this Court was timely, filed on April 1, 1981.

The jurisdiction of the United States Supreme Court to review this decision on appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case. Schnackenberg vs. Towle(1954) 75 S Ct 785; Pritchard vs. US(1950) 70 S Ct 1029.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment of the Constitution of the United States provides in Section 1 as follows:

*Appendix A6,D,H

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article IV, Section 1 of the United States Constitution provides in pertinent part:

> Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State.

Acts 1851-1852, TCA 17-104 is set out in full in the appendix hereto. In relevant part, the statute provides:*

> No judge or chancellor shall practice law or perform any of the functions of attorney or counsel in any of the courts of this state except in cases in which he may have been employed as counsel previous to his election.

STATEMENT OF THE CASE

On October 27, 1941, Margaret B. Waters bought from Sallie Brown a fifty (50) acre farm in District 13, Sevier County, Tennessee, with fee simple title. It lies approximately ten miles from Sevierville and the same distance from Gatlinburg, with a half mile frontage on the Little Pigeon River. It was paid for with money given Margaret Batterham Waters by her mother. In 1940, Don Waters, husband of Margaret B. Waters, first leased, later bought on June 5, 1945, approximately five (5) acres of noncontiguous Dustrict 13, Sevier County, property from Millard Williams. This 4.7 acre "stay place" is the only property Don Waters ever owned or claimed to own in Sevier County. It is not now, and never has been, the subject of any litigation in Tennessee.*

After living for a number of years in Sevier County where appellant taught school at Pittman Center, the family left Tennessee. During the intervening years, the taxes on the farm had been paid yearly by appellant or by someone acting in her behalf. She had no knowledge of the documents filed by Blaine McMahan and by others that clouded her title until late 1970 when she and her daughter returned to Sevier County. A short time later, represented

* Appendix M,N

by counsel, she filed a complaint in the Sevier County chancery court.

Earl R. Hendry, appointed in January, 1971, took the oath of office as chancellor, 13th Chancery Division, on February 15, 1971. He answered the complaint, Case 8099, 13th Chancery Division, Margaret B. Waters vs. Elaine McMahan, Georgia McMahan, Conley Henderson, Glenn Henderson, Fred Henderson, Paul Henderson, Oscar Dunn, Christine Merry Smith, in a motion to dismiss as attorney of record for all defendants, thirty days after his appointment, on March 15, 1971, his first appearance in their behalf. The matter involved title to the fifty acre Margaret B. Waters farm, District 13, Sevier County, Tennessee.

In Case 8099, appellant denied under oath ever signing a deed conveying her farm to anyone. The adversary parties have never presented any legally valid deed purporting to convey the farm from Margaret B. Waters to anyone. However Henderson et al. later admitted that one of the deeds they "uttered" into evidence in Case 8099, in an effort to establish a chain of title to the farm in themselves, was "fabricated" but they said they:

> would not attempt to explain, justify, defend or otherwise deal with this obvious fabrication.*

EarlR. Hendry used a case he himself had ruled on as chancellor, Maxwell vs. Land Developers Inc.(1972) 485 SW2nd 869, to support his position as private attorney in Case 8099. With the judge of the court as their attorney, Henderson et al. prevailed.

After the conclusion of Case 8099, a case was filed in Federal District Court, Los Angeles, Cal., 73-1820-CC, Margaret W. Crane vs. Christine Merry Smith, which involved,among other matters, the title to the 4.7 acre "stay place" belonging to Don Waters, deceased husband of Margaret B. Waters. Appellant was not a party to this case. Christine M. Smith denied under oath in federal court that she ever had claimed to have any interest in the Waters farm and later filed in Sevier County recorder of deeds office a rescission of the deed by which Elaine McMahan, trustee of Sevier County, claimed

*Appendix M

ownership of the Waters farm. Christine M. Smith stated in this rescission, which Henderson et al. admitted was genuine:

> I hereby rescind a certain deed, dated October 20,1966, and recorded October 25, 1966, Deed Book 156, Page 386, Sevier County, Tennessee, Register of Deeds office, noted in Note Book 16, Page 364, Item No. 7266, District 13, Parcel 12-6-3, Locust Ridge Road, on which I am the purported granter.
>
> This RESCISSION is made on the grounds that this deed, purportedly signed by me, granted land in which I did not have any right, title or interest, and to which I have never claimed any right, title or interest.
>
> I have consistently testified in answer to interrogatories, Case 73-1820-CC, Federal District Court, Los Angeles, California, and through my attorney in other pleadings, under penalty of perjury, that I have never believed that I had any interest in this property and never intended to convey it to anyone and never knowingly signed a deed conveying it to anyone, and never received any compensation for any deed purportedly conveying it.
>
> I have never received, nor has anyone acting in my behalf received, or claimed to have had delivered to me, or filed in any court or register of deeds office, any deed, will or other conveyance, or paper giving me any right, title or interest of any kind in the aforementioned land.*

In the meantime, Chancellor Hendry had resigned and in the spring of 1978, Chester S. Rainwater, a well known Dandridge, Tennessee, attorney, said to be a real estate expert, announced his candidacy for chancellor of the 13th Chancery Division in the upcoming elections. Also in the spring of 1978, one of the claimants of the Waters farm stated that Chester S. Rainwater was consulted regarding the matter and retained as an adviser.

On August 10, 1978, shortly after Chancellor Rainwater's election, Blaine McMahan, Conley Henderson, Glenn Henderson, Fred Henderson, Paul Henderson and Oscar Dunn filed a complaint, Case 10919, 13th Chancery Division, Sevier County, Charlie R. Johnson, attorney of record. This complaint named as defendants, Margaret B. Waters, Christine Morry Smith and Veryl Henderson, Recorder of Deeds, Sevier County, these two latter defendants not appearing either in person or through an attorney. The complaint demanded a temporary restraining order to restrain Margaret B. Waters from making any assertions anywhere, at any time, either written or oral, claiming the Waters farm as hers, from publishing any documents in the local newspapers with reference to the Waters farm, from either occupying or attempting to occupy the Waters farm.

*Appendix J,K

The complaint also demanded that Veryl Henderson be restrained from recording any documents prepared by Christine M. Smith or by Margaret B. Waters that refer to the Waters farm. It demanded that a list of documents, including deeds to other properties claimed by Henderson et al. and not subject of this litigation, that were only described by book and page, be declared null and void and "scrubbed" from the records of the recorder's office, Sevier County. Henderson et al. asserted their right to the Waters farm through the deed rescinded by Christine M. Smith and through the decision they obtained in Case 8099, 13th Chancery Division, Chancellor Earl R. Hendry, their attorney also Earl R. Hendry.

On August 29, 1979, appellant filed her defense and counterclaim, Case 10919, that Henderson et al. do not claim ownership of the Waters farm, only that a deed is recorded, DB 174, Pg. 343, through which they claim to have purchased from Elaine McMahan a certain parcel of real estate. The counterclaim stated that a complete absence of a showing of title in their claimed predecessor in title, Christine M. Smith, voided any claim Henderson et al. had to the Waters farm or to a temporary restraining order. There followed a number of motions by Defendant Margaret B. Waters, Case 10919, including a motion to void proceedings of Case 8099. In this Rule 60 motion, defendant brought to the attention of the court that the proceedings of Case 8099, 13th Chancery Division, were void in that the same adversary parties, Henderson et al., procured a favorable decision on the Waters farm by retaining the chancellor of the 13th Chancery Division, Earl R. Hendry, to represent them in his own court. Defendant supported her motion with a memorandum of points and authorities concerning case law - No judge may practice law. Chancellor Hainwater denied the motion.*

In the motion for admission of judicial proceedings of sister states, defendant, Case 10919, requested:-

That the order of the Federal District Court, Los Angeles, Cal., holding that Christine M. Smith wrongfully conveyed certain

*Appendix A4

District 13, Sevier County, Tennessee, real estate to others(Elaine McMahan) and that she had no title to the property.,

and that Christine M. Smith's admission that she never claimed ownership of the fifty acre Waters farm to anyone and that the only Tennessee property she believed she had any interest in was the 4.7 acre place.

Defendant, Case 10919, also filed an affidavit requesting the two (2) Federal District Court, Los Angeles, California, documents be sent directly from the official in whose custody they were held, to the clerk and master, Sevier County, Tennessee, for Full Faith and Credit. The documents were sent under seal to the clerk and master and filed in Case 10919. Defendant filed two sets of interrogatories, neither of which was answered. Defendant filed requests for admissions under TRCP Rule 36, regarding the undisputed facts and documents, including the rescission of deed. No response was made by Henderson et al. as Rule 36 requires.

On September 26, 1979, the court entered an order making the temporary restraining order a permanent injunction. Chancellor Rainwater, as judge, in his decision granted Henderson et al. every request except denial of freedom of speech. He refused to give Full Faith and Credit to the federal court decision, admitted genuine under Rule 36, that held Christine M. Smith did not have any ownership of any property in Tennessee and to her statements, made under oath, also admitted genuine, that she had never claimed any ownership of the fifty acre Waters farm.

Chancellor Rainwater held that Case 8099, Waters vs. Henderson et al., Earl R. Hendry, chancellor, Earl R. Hendry, attorney of record, was res judicata and that the rescission of the deed between Christine M. Smith and Elaine McMahan, filed by Christine M. Smith and admitted genuine, was void and of no effect.* Charlie Johnson, attorney for Henderson et al., had previously traced the filing history of the rescission of deed by Christine M. Smith, as follows:-

*Appendix A7-10

A rescission of the October 20, 1966, deed, between Christine M. Smith and Elaine McMahon, was received in the mail by Register of Deeds Veryl Henderson. Since it had an error in the preparation, Mrs. Henderson returned it to Christine M. Smith. The error was corrected and the document mailed back to the register of deeds. This rescission, acknowledged April 20, 1977, before a California notary, was recorded on May 14, 1977, Misc. Bk. 51, Pg. 917, Register of Deeds, Sevier County, and the original returned to Christine M. Smith at her Capistrano Beach, California, address. In the meantime, Veryl Henderson, who had never had a rescission of deed submitted to her for recording, requested an opinion from the state attorney general. He advised her in a letter that, since the rescission was properly prepared and acknowledged, it should be filed.

Chancellor Rainwater cited no case, statute or other authority in support of his opinion other than the opinion that Case 8099 was res judicata. He made no findings of fact though requested by defendant in Case 10919 pursuant to TRCP Rule 52.01. He voided documents on record with the Sevier County recorder of deeds, filed by persons not parties to the case concerning the 4.7 acre property not the subject of the litigation. Included in the list of documents was an abstract of title listing all recorded documents regarding the two District 13 Waters properties.*

On December 24, 1979, Margaret B. Waters received a note in the mail enumerating four (4) repricals that had already been carried out against her, the first being-"We set up your daughter." In the fourth, "We ran you out the Katen cabin." Charlie Johnson, attorney in the instant case for Henderson et al., signed the detainer warrant. The threat note ended with, "Get out of Tenn. Forget the farm. Or it will be your life next." *

On February 8, 1980, defendant, Case 10919, filed a motion for relief from the judgment for fraud upon the court. In spite of the threat note and Attorney Johnson's participation in open harassment, the court denied the motion.

Notice of appeal and appeal bond were timely filed on October 25, 1979, and December 6, 1979. On October 3, 1980, the Court of Appeals affirmed agreeing with Chancellor Rainwater that Case 8099 was res judicata. The Court continued:-

Moreover we are frank to say we can see no real distinction...between a chancellor or judge trying a case in a court over which he presides than in any other court of the State.

*Appendix L,M

On October 10, 1980, appellant filed a petition for rehearing which was denied on October 21, 1980.

On November 19, 1980, appellant filed her application for permission to appeal to the Tennessee Supreme Court.

On December 23, 1980, two faculty members of Vanderbilt School of Law filed a motion for leave to file brief as amici curiae, stating in part:

> Their interest in the case is that it raises issues which are important to the administration of justice and to the practice of law in Tennessee.*

Henderson et al. did not oppose the Vanderbilt motion until more than thirty (30) days had elapsed. On January 30, 1981, the court denied the Vanderbilt motion. On March 16, 1981, the Tennessee Supreme Court filed an order:

> On considering the petition to rehear and briefs filed in this case and the entire record, the petition of Margaret B. Waters is denied.

SUMMARY OF ARGUMENT

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1. Appellant's land was originally taken from her by a Tennessee court decision, Case 8099, in which the judge of the court was retained by the adversaries to represent them in his own court.

This Honorable Court made it clear more than thirty(30) years ago that it was morally, if not legally, impossible for a state judge to enter into an attorney-client relationship. This Court quoted from the American Bar Association Canon 31 of Judicial Ethics to the effect:-

> A judge of a court of general jurisdiction is forbidden to practice law. And Canon 24 provides that a judge should not accept inconsistent duties...which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his judicial functions.
> Pritchard vs. US (1950) 70 S Ct 1029.

In 1963, the Tennessee legislature made the American Bar Association Code of Judicial Ethics the rules of conduct for judges, TCA 17-406. This law eliminated the implied right of judges under TCA 17-105 to practice in cases in which they might have been employed

*Appendix D

prior to their election.*

2. The appellees have no valid cause of action. Their claimed predecessor intitle has since Case 8099 denied in a higher court and in a filed affidavit that she neither had nor claimed to have any right, title or interest in the subject property. It is common law that a vendee's title rises no higher than his vendor's. Such an absolute denial, supported by the federal court's order that the claimed predecessor had no ownership of any Tennessee property, must be given Full Faith and Credit. Otherwise the orderly conveyancing of real estate will become a farce and the possession of property will be by those who have the power to seize and hold it.

ARGUMENT AND POINTS AND AUTHORITIES

Is any decision, rendered by a court in which the judge of the court is a party's attorney, valid? The question raised by the case at bar is whether, under modern thinking, a chancellor can practice law in his own or any other court.

Prior to 1950, a few states permitted some inferior court judges to practice law in courts otner than their own due to the scarcity of persons "knowledgeable in the law", and the inability of the county to pay an adequate compensation for the services of a competent judge. Town of Bruce vs. Dickey (1886) 116 Ill 527; 6 NE 435: O'Hare vs. Chicago M. and N.E. Co. (1891) 139 Ill 151; 28 NE 923: Reynolds vs. Chumbley (1940) 175 Tenn 492.

However that day is long gone. Tennessee judges and chancellors are currently among the best paid in the country with a yearly cost of living increase guaranteed. TCA 8-2301. They now receive about double the base salary Chancellor Hendry was paid, $25,000.00 (twenty-five thousand dollars) yearly.

An analysis of this Court's decisions, and the history of the various other states' cases precluding the practice of law by judges, clearly demonstrate that no decision rendered by a court in which the judge of that court also acts as an attorney for a party can be valid.

*Appendix N

In Eden vs. Eeaman (1934) 167 Okla 525; 30 P2nd 899, it was held that the constitutional and statutory provisions prohibiting district judges from practicing law also prohibited such practice by county judges.

In Perry vs. Bush (1903) 46 Fla 242; 35 So 225;

> When an attorney at law is elevated to the bench of any of our circuit courts as the judge thereover presiding, his right to practice law as an attorney, counselor or advocate in any of the courts of this state, including the Supreme Court, becomes suspended and continues to be suspended as long as he occupies the official position of judge.

In State ex rel Nebraska State Bar Association vs. Wiebusch (1951) 153 Neb 583; 45 NW2nd 583, when evidence disclosed that a county judge had engaged in the practice of law in his own court, concurrently with his term of office, it was held he would be disbarred because such conduct violated the state constitution and the Canons of Ethics of the American Bar Association which had been adopted and approved by the state supreme court.

In Wright vs. Hoon (1850) Iowa 2 G Greene 458, when the district judge appeared as plaintiff's attorney in an action tried in his own court before a substitute judge, a judgment in favor of the judge's client, the plaintiff, was reversed by the supreme court on the ground,among others, that the impropriety of a judge appearing as counsel in his own court was apparent and constituted an error sufficient to reverse any judgment thus obtained.

The constitutional or statutory prohibition against any judge acting as an attorney in his own court or in cases going up from his own court was held in: Evans vs. Funk(1894) 151 Ill 650; Reynolds vs. Chumbley (1940) 175 Tenn 492; Hudson vs. Grieve (1810) 1 (Mart) La 143; Lilley vs. State (1912) 7 Okla Crim Rep 284; Bashford vs. People (1872) 24 Mich 244People ex rel Colorado Bar Association vs. Class (1901) 70 Colo 381; Tucker vs. Myers (1949) 151 Neb 359.

This present matter is indistinguishable on any principle ground from previous ones this Court has decided. In 1950, this Court held that it was not legally possible for a state judge to enter

into an attorney-client relationship, citing Canon 31 of the Judicial Ethics promulgated by the American Bar Association and Canon 24 providing that a judge should not accept inconsistent duties which would in any way interfere or appear to interfere with the expeditious and proper administration of his official function. Pritchard vs. US (1950) 70 S Ct 1029.

The Pritchard decision expressly overruled the Kentucky statute almost identical to TCA 17-107, which held:

> A judge shall not practice law in any court of the state except in cases in which he was employed previous to his election. Kentucky Revised Statutes, Sec. 120,Par.1.

The United States Supreme Court also quoted Canon 21 of the Judicial Ethics of the American Bar Association to the effect that judges should not be permitted to practice law in courts of general jurisdiction and concluded that by all standards of ethical conduct, it was morally, if not legally, impossible for the state judge to enter an attorney-client relationship with Mr. Pritchard.

Four years later, the United States Supreme Court agreed with the Illinois Supreme Court's expressly overruling in Schnackenberg vs. Towle (1954) 123 NE2nd 817, two prior cases, Town of Bruce vs. Dickey (1886) 6 NE 435 and O'Hare vs. Chicago M. and N.E.Co. (1891) 28 NE 923, which had permitted some judges to practice as attorneys in courts other than their own:

> We agree...that the policy of keeping our courts free from suspicion would be difficult, if not impossible, to maintain if this court gave judicial sanction to one whom the people have elected a judge, with statewide power, to engage for personal gain in the partisan practice of law...We conclude therefore, that the agreement contemplating that appellee, while holding the office of judge, should perform legal services on behalf of a client is, because of the tendency to bring the administration of justice into suspicion and disrepute, contrary to the public policy established by the judicial decisions of this court. Schnackenberg vs. Towle (1954) 75 S Ct 785.

When Case 8099 was taken to the United States Supreme Court on the issue-"Can a judge practice law in his own court concurrently with his judicial duties", the Supreme Court refused jurisdiction, thus letting stand without comment its two prior

holdingw in Prtichard and Schnackenberg, a judge cannot practice law in any court and certainly not in his own court. Waters vs. Henderson et al. (1974) 94 S Ct 3062.

This Court itself recognizes the impropriety of law practice even by a court employee. Rule 7 of this Court prohibits the practice of law by any of its employees in any court and further precludes any employee from participating in any way in any case before this Court until two (2) years have elapsed after separating from that position.

Since this Court's decision in Schnackenberg, almost all the states have through statute or adoption of the Canons of Ethics, American Bar Association, prohibited the practice of law by any judge.

> Even in the absence of any statute or constitutional provision prohibiting a judge from practicing, his oath of office, code of judicial ethics and sound public policy of the separation of judicial office from the practice of law would prohibit such an action by a chancellor or circuit judge. 89 American Law Reports 2nd 607.

> It has always been universally held that no judge can practice law in his own court and that he may not practice law in regard to any matter which either had or might come before him in his judicial capacity at some future time. 89 American Law Reports 2nd 886.

> A judge cannot act as attorney or counsel in a case pending before him or before the court of which he is a member. 46 Corpus Juris Secundem, Sec. 9.

> Usually by virtue of a constitutional or statutory provision or a rule of court a judge of a court of record is prohibited from practicing law. 46 Am Jur2nd Sec. 51, Judges.

As Chancellor Gibson said some seventy-five years ago regarding TC A 17-105:-

> No chancellor should appear as solicitor in any case after his election or appointment even in cases where he has been previously employed as he is deemed so greedy of pelf as to be anxious to obtain the fees of a solicitor and the salary of a chancellor at the same time...A chancellor should never descend tocasuistry for no casuistrist is fit to be a chancellor. Gibson's Suits in Chancery, Tennessee. Sec.1136.

In Reynolds vs. Chumbley, the Tennessee Supreme Court held: That the statute which provided that the county judge is not precluded from practicing in the superior, chancery or circuit courts of the state, but shall not act as counsel in a case going up from his own court was not unconstitutional in that it made an

arbritary and unreasonable distinction between county judges on the one hand, and judges and chancellors on the other.

It continued: that public interest does not permit of the diversion of the attention of a circuit judge or chancellor to the practice of law...The law aims as far as possible to give every man a trial that shall not only be fair, but as free as may be from any suspicion of partiality or undue influence.

Rules of Tennessee Supreme Court 43, Codes of Judicial Ethics, American Bar Association, Canon 1:

An independent and honorable judiciary is indispensable to justice in our society...A judge should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Only Tennessee now marches to a different tune:-

Moreover we are frank to say we can see no real distinction particularly so in a non-jury case between a chancellor or judge trying a case in a court over which he presides than in any other court of the State.
Henderson et al. vs. Waters(1961)Court of Appeals Opinion.*

On considering the petition to rehear and briefs filed in this case and the entire record, the petition is denied. Per Curiam, Henderson et al. vs. Waters (1961) Supreme Court of Tennessee.

The Tennessee Court of Appeals argues that TCA 17-105:

No judge or chancellor shall practice law, except in cases in which he may have been employed as counsel previous to his election:-

repeals as the more recent act by implication, TCA 29-301:

Public officials prohibited from Practicing: Judges and chancellors are prohibited from practicing law in any of the courts of this state:-

both acts "codified" in the 1800s. The court continues:-

Moreover we think it,(TCA 17-105) should prevail in any case because as codified, TCA 17-105 specifically addresses judges and chancellors, whereas TCA 29-301 includes other public officials.

To follow this argument then, TCA 17-105 was itself repealed in 1953 by the legislature:-

Be it further enacted that the conference shall have full power and authority to prescribe rules of official conduct of all judges, the same to be in compliance with the code of judicial ethics as promulgated by the American Bar Association, but not otherwise. Canon 5F, Practice of Law- A judge should not practice law.*

TCA 17-406 affirms that:*

The rules of conduct for judges shall be in compliance with the code of judicial ethics as promulgated by the American Bar Association, but not otherwise.

* Appendix Bb,K

This statute refers only to judges and thus is specific to them.

Lying at the foundation of the problem is the issue of whether the Tennessee courts have stepped beyond their constitutionally delegated function of merely interpreting the law. Instead it would appear they are encroaching upon the legislature's lawmaking prerogatives in ignoring the 1953 law which made the American Bar Association Code of Judicial Ethics the rules of conduct for judges. It may be argued that the Tennessee courts themselves are placed in the position of ruling favorably on their own self-serving interests in continuing the practice of law concurrently with their official duties.

In summary, the opinions of the Tennessee Supreme Court and the Tennessee Court of Appeals are impossible to justify on any basis and merit swift, summary reversal by this Court.

Can a Tennessee court refuse to grant Full Faith and Credit to a federal court's adjudication of lack of title in a claimed predecessor in title?

Appellant requested that pertinent papers be transported to the clerk and master, Sevier County, directly from the authority having custody of them. This was done and two (2) documents from Case 73-1820-CC, Federal District Court, Los Angeles, California, Crane vs. Smith, were sent under seal and filed in the 13th Chancery Division, Sevier County, Henderson et al. vs. Waters, Case 10919, for full faith and credit.

Document A in pertinent part:-

> On January 22, 1975, Federal District Court, Los Angeles, Cal, Civil No. 73-1820-CC, Christine K. Smith stated that she never believed she had any interest in the fifty acre Waters farm and did not intend to convey it by deed October 20, 1966. She did state that she conveyed the 4.7 acre Don Waters stay place by deed of October 20, 1966, "to a Mr. Keenan". She further stated that she had never claimed ownership of the fifty acre farm to anyone and that the only Tennessee property she believed she had an interest in was the 4.7 acre place for which she received $1,600.00(one thousand, six hundred dollars) from L.H. Carpenter, a Knoxville real estate agent.

Document B in pertinent part:-

On May 4, 1976, a judgment was prepared by Christine M. Smith and entered in the same case, holding that Christine M. Smith wrongfully conveyed said real property in Tennessee, (Don Waters 4.7 acre place) to others. A certified copy of this judgment and Christine M. Smith's statement as filed in Case 73-1820-CC, were recorded June 18, 1976, Misc.Bk. 47,Pg.503, Register of Deeds, Sevier County, Tenn.

This was one of the documents "scrubbed from the record " by the chancery court.

Article IV, Sec. 1, US Constitution:

Full faith and credit shall be given in each state, to the public acts, records and judicial proceedings of every other state.

Full faith and credit must be given to the records, pleadings and evidence of the courts of another state. Joice vs. Serles 18 Ga 725.

Full faith and credit clause of the United States Constitution is to make the court proceedings of the several states binding each on the other. Williams vs. State of North Carolina 63 S Ct 207.

It is settled law that a court having jurisdiction over a person may properly determine that person's interest in property located in another state. Miller vs. Birdson. (1874) 66 Tenn 531; Cory vs. Olmstead (1926) 154 Tenn 513; Watkins vs. Watkins (1929) 22 S.2nd 1.

In Mills vs. Mills (1956) 147 Cal App2nd 107, the court cited with approval(Tenn. Watkins) in which the court having personal jurisdiction of the party, required a waiver of his interests in realty in Alabama.

The purpose of the full faith and credit clause is to help weld the independent states(including Tennessee) into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit to sister states as they have in the state of the original forum. The credit given is not to be niggardly but generous and full. A local policy may be required to give way to the mandate of the Constitution. Johnson vs. Muelberger (1951) 71 S Ct 474.

The issue of appellees' claimed predecessor_in_title's lack of any right, title or interest in the Waters farm was conclusively established in Federal District Court, Los Angeles, Cal. It is res judicata of that issue and Henderson et al. are now collaterally estopped from asserting their "ownership" of the Waters farm through this alleged predecessor.

The full faith and credit clause has the function of avoiding relitigation in other states of adjudicated issues and

renders them res judicata. Dorfee vs. Duke(1963) 84 S Ct 242; Sutton vs. Leib (1952) 72 S Ct 398.

It is common law that a vendee acquires no better title to the property than his vendor has. The courts of Tennessee are attempting to negate this common law principle. After the decision in Waters vs. Henderson et al., Case 8099, 13th Chancery Division, Sevier County, Tennessee, Henderson et al.'s claimed predecessor in title to the real estate denied under oath in a rescission filed in the Sevier County recorder of deeds' office on May 14, 1977, based on her federal court testimony that she neither had or claimed to have any right, title or interest in the District 13, Sevier County real estate.*

The chancery court held that this rescission of deed was void and of no effect "from the evidence which is clear, cogent and convincing". The court refused to state just what the clear, cogent and convincing evidence was though it was requested to do so in a motion.

The records support the assertion that the present chancellor was retained as an adviser in the matter of the farm litigation and that he continued as their adviser during the time the case was before him.

If a claimed predecessor in title is held by a higher court to have no right, title or interest in a property, and she herself denies in that court any ownership of the questioned property, then later in an affidavit filed in the county where the property is located, based on the sister state's court proceedings, she again denies any right, title or interest in the property, must not "full faith and credit" be given to her denial of ownership?

At present in Tennessee, a deed with the correct description is all that is necessary to convey property. It is immaterial that the purported grantor neither has, nor claims to have , any ownership of the property. Can a court of conscience permit such a decision to stand without doing irreparable damage to the various states' system of conveyancing?

*Appendix K

CONCLUSION

The United States Supreme Court in 1950 and again in 1954 conclusively held that state judges could not practice law. By all constitutional principles, those decisions were binding on the various states. However Earl R. Hendry's successful law practice, concurrently with his judicial duties(he is said to have received a fee of $25,000.00 in Case 8099), has lead to ever-increasing abuses in the practice of law by judges and other public officials.

Canon 9, American Bar Association:

> Continuation of the American concept that we are to be governed by rules of law, requires that the people have faith that justice can be obtained through our legal system.

Up to his death, Sevier County juvenile court judge carried on an extensive in-court private law practice. The district attorney general of Sevier County acted as a private attorney for a party in a million dollar civil plane crash case. The record supports the assertion that the present chancellor was retained by Henderson et al. as an adviser in this case. Further, his private law practice is said to have increased dramatically since the higher court's opinion has approved of judges practicing in their own or in any other court in the state. Carried to the extreme, virtually every judge in Tennessee could, if he wished, openly practice law.

A judge "so greedy of pelf as to be anxious to obtain the fees of a solicitor and the salary of a chancellor at the same time" will certainly give first attention to his private clients over his judicial duties and, in a case where his fee is large, may not even maintain any adherence to legislative intent and statute. He can in an important litigation create case law in his own rulings to support his private law practice argument as did Chancellor Hendry when he used his decision in Maxwell vs. Land Developers Inc. to sustain his clients' position in Case 8099. With the judge as judge one day and adversary attorney the next, lawyers will perforce proceed with timidity against such a powerful entity.

The Tennessee legislature made its intent clear that judges should not practice law when, in 1953, it gave the American

Bar Association Code of Judicial Ethics the force of a statute. More than twenty-five years have passed since this Court's last decision in Schnackenberg vs. Towle, holding that a judge could not practice law. It is obvious that it is time for this Court to bring up-to-date this opinion of a quarter of a century ago.

On September 21, 1971, the Wall Street Journal printed a front page story entitled:-

> Land for the taking? In Tennessee anybody may claim ownership of vast territories. Trouble is, none of the deeds would stand up in court, but swindlers keep busy.

In the decade since, the "sale" of land without ownership has increased. The deed books bulge with these "conveyances", usually involving land of an absentee owner, or one with limited resources, claimed by a powerful land developer or by a public official. Most of the aggrieved owners, when they learn their property is no longer theirs, give up without a fight, knowing they cannot look to the courts for fair decisions. If such an owner has the courage to object in legal proceedings, he not only is confronted with the danger of personal injury to himself, to his loved ones and to destruction of his property, but he finds that these deeds do stand up in court with the judge of the court his adversaries' attorney.

To permit this tyranny to continue would be a violent encroachment on the individual citizen's rights as guaranteed by the United States Constitution. This is not only scandalously horrifying: it is tragic. Tennessee, the once proud Volunteer State, host to a coming World's Fair, is making an absurd and evil comedy of the judicial system and of land conveyancing, cornerstones of democracy. Only a higher authority can stop this mad, stupid descent into anarchy.

For the reasons stated above, it is respectfully submitted that the Tennessee courts' orders, based on the proceedings of Case 8099, in which the judge of the court was also adversaries' attorney, making an injunction permanent, be reversedand the cause

remanded with instructions to dissolve the injunction as being founded on a void judgment.

Respectfully,

Margaret Batterham Waters

Margaret Batterham Waters

STATE OF TENNESSEE)
)
COUNTY OF BLOUNT) ss.

Margaret B. Waters, having been first duly sworn, deposes and says:-

That she has prepared and read the foregoing BRIEF in rem and in personam, and knows the content thereof, and that the same is true of her own knowledge except as to those matters that are herein stated upon her information or belief, and as to those matters she believes it to be true.

Margaret Batterham Waters

Margaret Batterham Waters

Subscribed and sworn to before me
this 27 day of April, 1981.

Notary Public for said State and County
my Comm Expires: 12-20 82

I, Margaret B. Waters, certify that a copy of this Brief is served by mail on:

Atty.Gen.William M. Leech,
450 James Robertson Parkway,
Nasnville, Tenn. 37219

Atty. Charlie Johnson,
148 Court Avenue,
Sevierville,Tenn. 37862.

IN THE CHANCERY COURT FOR SEVIER COUNTY, TENNESSEE

FRED HENDERSON, ET AL

VS NO. 10919

MARGARET B. WATERS, ET AL

APPEARANCES:

For the Plaintiffs

Charlie Johnson
Attorney at Law
Sevierville, Tennessee

For the Defendants

Margaret B. Waters

BEFORE:

Hon. Chester S. Rainwater, Jr., Chancellor

DATE:

July 19, 1979

MARY F. ROLEN
COURT REPORTER
ROUTE 9 JERSEY DRIVE • SEVIERVILLE TENN
(615) 453-7554

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OPINION OF THE COURT

The following is the Opinion of the Court rendered in the case of Fred Henderson, et al vs. Margaret B. Waters, et al, on July 19, 1979, by Hon. Chester S. Rainwater, Jr., Chancellor.

THE COURT: Gentlemen, we have completed the trial of this case. The Court notices the file is rather voluminous considering the issues before the Court in the case. The matter has been tried ~~heretofore stated~~ by the Court with the defendant, Mrs. Waters, representing herself Pro Se. The Court has tried to take into account the problems that sometimes arise when parties are not represented by counsel in the matters of what is admissable in evidence, what is permissable under the rules, and in every instance where any question has been raised regarding any such matters the Court to the extent it felt could, has been liberal in allowing rather than rejecting any of the matters which the defendants have brought to the attention of the Court so that the defendants would be in a position to preserve the record, and if this Court should make any error that the Appellete Court would be in a position to properly review the matter.

From all of the evidence that has been offered, the exhibits that have been offered, the entire record in the cause, the Court finds first of all that a default judgment which was heretofore granted against the defendant, Christine

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Mary Smith, be reaffirmed and a order will be entered nunc pro tunc sustaining that verbal entry of the default judgment some time back.

There are certain matters in the file, certain motions in the file that have not been specifically ruled upon and orders entered. For example, there is in the file a motion of the defendant, Margaret B. Waters, for a order voiding the proceedings of cause No. 8099 in the Chancery Court for Sevier County.

Now, its been indicated throughout this hearing that the Court treats the final judgment and decree in cause 8099 as being ~~res~~ judica; and, therefore, that motion must be overruled and denied.

There is also contained in the file prepared by the defendant, Mrs. Waters, a proposed finding of fact for the Court to enter pertaining to the motion for order voiding the proceedings of cause No. 8099. Now, those findings of fact as submitted and contained in the file are denied by the Court.

It is also contained in the file a motion by the defendant, Mrs. Waters, to dissolve the temporary restraining order which was filed in this cause, actually it was entered on September 14th and I believe filed perhaps into the minutes on November 8, 1978. That motion to dissolve the temporary restraining order will be overruled and denied.

There is also a motion in the file filed by the

defendant, Mrs. Waters, for -- entitled motion for reconsideratio of defendant's motion to void proceedings of case No. 8099. This motion being filed on November 1, 1978. For the same reasons as the Court has indicated in denying the original motion, this motion to reconsider is also denied.

The Court finds that the instrument purporting to be a recision deed or deed of recision, however its referred to, purportedly executed by the defendant, Christine Mary Smith, to be void, of no effect and should be so held and declared. The Court finds this to be -- this deed, so called deed, to be void by clear cogent and convincing evidence as contained in the record and such recision deed will be declared void and a copy of the judgment entered in this cause so holding will be directed to be filed in the office of the Register of Deeds of Sevier County, Tennessee.

The Court further finds from the evidence, which is clear, cogent and convincing, that the documents recorded in the following Misc. books and pages of the Register's Office of Sevier County, Tennessee, be declared to be a cloud upon the title of the property mentioned and described in this cause and under the ownership of the plaintiffs herein pursuant to the decree of the Court in cause No. 8099 and that a copy of this judgment will likewise contain this finding and be recorded in the office of the Register of Deeds and that those documents which we will refer to specifically hereinafter, will be declared

void and removed as clouds upon this title. Those instruments for the purpose of this opinion, will be referred to by their book and page -- the recording book and page number only. In the judgment the judgment will go further and set out the title of each instrument and the exhibit number to be found in the record of this cause.

These instruments are recorded as follows: all in Misc. book and I won't repeat that; 35, page 338; 47, page 503; 40, page 21; 49, page 447; 51, page 844; 51, page 917; 58, page 551; and 58, page 1.

The temporary restraining order heretofore entered -- the temporary restraining order of September 14, 1978, heretofore entered in this cause will be made a permanent injunction against the parties as set forth in that restraining order. It is reaffirmed in full by the Court and made a permanent injunction against the parties and which also includes the matter of the recording of instruments pertaining to the title to the lands mentioned and described in the subject matter of this litigation in exactly the same way and manner as is set forth in that restraining order.

The costs of the cause will be taxed to the defendant, Mrs. Waters. Judgment will be prepared in keeping with this -- these findings of the Court. Judgment can contain the proper prayers, if necessary, for any appeal or any other matters. Are there any other matters that ---.

MRS. WATERS: The Court didn't rule on the motion for full faith and credit.

THE COURT: That is implicit within the Court's findings, Mrs. Waters. The effect of it is the Court finding that it is not material.

THIS IS ALL OF THE OPINION OF THE COURT HELD ON JULY 19, 1979, IN THE ABOVE STYLED CAUSE.

Chancellor

IN THE CHANCERY COURT FOR SEVIER COUNTY, TENNESSEE, AT SEVIERVILLE

FRED HENDERSON, PAUL HENDERSON,
GLENN HENDERSON, OSCAR DUNN,
BLAINE MCMAHAN and CONLEY HENDERSON

Plaintiffs

VS.

NO. 10919

MARGARET B. WATERS, CHRISTINE
MERRY SMITH and VERYL HENDERSON,
REGISTER OF DEEDS FOR SEVIER
COUNTY, TENNESSEE

Defendants

JUDGMENT

This cause came on to be heard before the Honorable C. S. Rainwater, Jr., upon the 19th day of July, 1979, upon the application of the plaintiffs for a temporary restraining order, the answer and counter-claim of the defendant, Margaret B. Waters, all other pleadings, exhibits, the entire record in this cause, and the sworn testimony of witnesses in open court, from all of which the Court finds as follows:

1. That proper service of process has been made and that all Defendants are properly before the Court.

2. That the Motion for Default Judgment against the Defendant, Christine Merry Smith, is well taken and that Christine Merry Smith has failed to appear and otherwise plead as provided by law, and that a Judgment by Default should enter as to Christine Merry Smith, Defendant.

3. The Court finds that the final judgment and decree in Sevier Chancery Cause No. 8099 is Res Judicata and that the Motion of the Defendant, Margaret B. Waters, to void proceedings of Case No. 8099 must be overruled and denied.

4. That the Proposed Finding of Facts for the Court to enter attached to the Motion for an Order Voiding the Proceedings of Sevier Chancery Cause No. 8099 should be and are denied by the Court.

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5. That the Motion by the Defendant, Margaret B. Waters, to dissolve the Temporary Restraining Order which was filed in this cause September 15, 1978, and filed in the Minutes of the Chancery Court on November 8, 1978, in Minute Book O-3, Page _____, should be overruled and denied.

THE COURT finds that the Motion of the Defendant, Margaret B. Waters, and titled "Motion for Reconsideration of Defendant's Motion to Void Proceedings of Case No. 8099" should be denied for the reason that Sevier Chancery Cause No. 8099 is Res Judicata.

6. The Court finds that the Instrument purporting to be a Rescission of Deed, purportedly executed by the Defendant, Christine Merry Smith, to be void, of no affect and should be so held and declared. The Court further finds this Rescission of Deed of record in Misc. Book 51, Page 917, Register's Office, Sevier County, Tennessee, to be void by clear, cogent, and convincing evidence as contained in the record and such Rescission of Deed shall be declared void and a copy of the Judgment entered in this cause so holding should be filed in the office of the Register of Deeds for Sevier County, Tennessee, with appropriate marginal notations made by the Register of Deeds to cross-reference to this document.

7. The Court further finds from the evidence which is clear, cogent and convincing that the documents recorded in the Sevier County Register's Office as follows:

(a) Lis Pendens - Sevier Chancery Cause #8099, Court of Appeals Eastern Section, State of Tennessee, Recorded in Misc. Book 35, Page 338, Register's Office, Sevier County, Tennessee, on February 20, 1973.

(b) Lis Pendens - Civil Case #73-1820-CC U.S. District Court for Central District of California in cause of Margaret Waters Crane vs. Christine Merry Smith recorded in Misc. Book 47, Page 503, Register's Office, Sevier County, Tennessee, on June 18, 1976.

(c) Lis Pendens - Civil Case #73-1820-CC U.S. District Court for Central District of California in cause of Margaret Waters Crane vs. Christine Merry Smith recorded in Misc. Book 40, Page 21, Sevier County Register's Office, Tennessee, on July 1, 1974.

(d) Affidavit of Forgery - Recorded in Misc. Book 49, Page 447, in the Sevier County Register's Office, Tennessee, on November 10, 1976.

(e) Affidavit of Forgery and Non-Delivery of Deed - Recorded in Misc. Book 51, Page 884, in Register's Office for Sevier County, Tennessee, on May 9, 1977;

(f) Rescission of Deed - Recorded in Misc. Book 51, Page 917, Sevier County Register's Office, Tennessee, on May 14, 1977;

(g) Notice of Assessment of Taxes - Recorded in Misc. Book 58, Page 551, Sevier County Register's Office, Tennessee, on August 1, 1978;

(h) Abstract of Title - Recorded in Misc. Book 58, Page 1, Sevier County Register's Office, Tennessee, on June 26, 1978;

be declared to be clouds upon the title of the property subject of this cause and being located in the 13th Civil District and being more particularly described in Warranty Deed dated December 23, 1968, and of record in Warranty Deed Book 174, Page 345, Register's Office for Sevier County, Tennessee, and under the ownership of the Plaintiff's Fred Henderson, Paul Henderson, Conley Henderson, Glenn Henderson and Oscar Dunn, and that such documents be declared void and removed as clouds upon this title pursuant to the decree of the Court in Sevier Chancery Cause No. 8099, and as further found in this cause.

8. The Court further finds that the Temporary Restraining Order heretofore entered on September 14, 1978, should be made a permanent injunction against the parties as set forth in that Restraining Order as follows:

> "It is therefore, Ordered, Adjudged and Decreed that the Defendants, Margaret B. Waters and Christine Merry Smith, are hereby enjoined and restrained from recording any documents or instruments whatsoever in the Office of the Register of Deeds for Sevier County, Tennessee, which reflects adversely as to the title of property which has been litigated in Chancery Cause No. 8099 and specifically that described in Warranty Deed Book 174, Page 345, Register's Office for Sevier County, Tennessee, unless said documents have been filed with the Chancery Court and approved with the Chancery Court for Sevier County, Tennessee, for recording purposes.
>
> That the Defendant, Margaret B. Waters, is hereby enjoined and restrained and prohibited from doing any acts, such as occupying or attempting to occupy the property to which said title has been litigated in Cause No. 8099 of the Chancery Court for Sevier County, Tennessee, or doing any acts that would adversely affect the use and enjoyment of the property by the proper owners of said property as litigated in Cause No. 8099 of the Sevier County Chancery Court and of record in Warranty Deed Book 174, Page 345, Register's Office for Sevier County, Tennessee.

That the Defendant, Veryl S. Henderson, Register of Deeds for Sevier County, Tennessee, is hereby enjoined and restrained from recording any document purportedly prepared by Christine Merry Smith and any documents purportedly prepared by Margaret B. Waters and any documents executed by either Christine Merry Smith and/or Margaret B. Waters and any other documents or instruments presented by Margaret B. Waters for recordation that have reference to the property duely described in Warranty Deed Book 174, Page 345, and as litigated in Cause No. 8099, of the Chancery Court for Sevier County, Tennessee, or any document or instrument that reflects adversely as to the title of said property so litigated, unless said document has been filed with the Chancery Court for Sevier County, Tennessee, and approved by said Court for recording purposes.

This Temporary Restraining Order shall remain in affect and be binding upon the parties hereto, their agents, officers, attorney's, or other persons acting in concert or participating with the parties."

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the foregoing findings of the Court in this cause shall be and the same are hereby adopted as the Orders of this Court. Further, this judgment shall be filed in the Office of the Register of Deeds for Sevier County, Tennessee, and the Register of Deeds shall make notation of this Judgment and cross-reference same on the margin of all documents referred to herein.

The cost of this cause are adjudged against the Defendant, Margaret B. Waters, for which execution may issue if necessary.

ENTER this the 26 day of September, 1979.

C. S. RAINWATER, CHANCELLOR

APPROVED BY:

JOHNSON & MAXWELL

BY: Charlie R. Johnson
Charlie R. Johnson, Attorney for Plaintiffs

Entered with the approval of the Defendant Margaret B. Waters - Due Notice Given. See attached letter

Margaret B. Waters, Pro Se

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED
OCT 3 - 1980
JOHN A. PARKER, Clerk
By_____

FRED HENDERSON, et al.	) FROM THE CHANCERY COURT FOR SEVIER COUNTY
Plaintiffs-Appellees	)
	)
v.	HON. C. S. RAINWATER, JR.,) CHANCELLOR
MARGARET B. WATERS	)
Defendant-Appellant	) AFFIRMED

MARGARET B. WATERS, APPELLANT, PRO SE

CHARLIE R. JOHNSON OF SEVIERVILLE FOR APPELLEES

O P I N I O N

Goddard, J.

Fred Henderson and others, Plaintiffs-Appellees, filed suit against Margaret B. Waters, Defendant-Appellant, Christine Merry Smith, and Veryl S. Henderson, the Register of Deeds for Sevier County. The suit sought to void certain documents recorded in the Register's Office for Sevier County as a cloud on title to real estate owned by the Plaintiffs, and also to enjoin Mrs. Smith,

one of the Plaintiffs' predecessors in title, and Mrs. Waters from executing and recording any further instruments—such as the "rescission of deed" previously signed and filed—which would reflect upon their title. It also sought to enjoin the Register of Deeds from recording such instruments.

After a full evidentiary hearing, the Chancellor rejected—upon the grounds of res judicata—Mrs. Waters' contention that she was the owner of the property in question, finding that the issues had been fully litigated in cause number 8099 in the Chancery Court for Sevier County. (This case, incidentally, was appealed to this Court and affirmed by an opinion entered on July 11, 1973. Mrs. Waters' petition for a writ of certiorari was denied, both by the Supreme Court of Tennessee and of the United States.) The Chancellor thereupon entered an order declaring certain instruments recorded in the Register of Deeds Office null and void, and made permanent a temporary injunction restraining the execution and recordation of such instruments in the future.

At the outset, we must dispose of three pending motions, one by the Plaintiffs and two by the Defendant. The Plaintiffs move that the deposition of Susan Lynne Gold, which they contend was admitted into evidence, be included as a part of the record. This motion is opposed by the Defendant. In light of the fact that no testimony was preserved, as more fully addressed hereinafter, we are of the opinion the motion is not well taken, and it is denied.

The Defendant's first motion seeks an order of this Court to require the Plaintiffs to state "the persons who are parties to the appeal," contending that "one or more of the plaintiffs in the trial court . . . have withdrawn from the

appeal." In light of the representation made during oral argument by counsel that all of the parties named as Plaintiffs continue to be parties to the appeal, this motion is denied. The second motion seeks to strike the last sentence of page 20 of the Plaintiffs' brief as being impertinent and scandalous. The Court is inclined to agree with the Defendant as to this motion, and it is sustained.

The record comes to us in two volumes, the first being what was known under the former practice as the technical record consisting of pleadings, motions, affidavits, interrogatories, bonds and the like. The second principally consists of exhibits to the pleadings and to the testimony introduced at the trial. The testimony elicited at the hearing to explain and illuminate these exhibits was not preserved.

It is clear that under our former practice a bill of exceptions that does not contain all the evidence material to the issues raised must be stricken, Chapman v. Mayor and Board of Aldermen of the City of Milan, 48 Tenn.App. 196, 344 S.W.2d 773 (1960), which, of course, would leave the case before us without a bill of exceptions. It is equally clear that under such circumstances an appellate court conclusively presumes that the evidence was sufficient to sustain the findings of the Chancellor. Wilson v. Hafley, 189 Tenn. 598, 226 S.W.2d 308 (1949); Kyritsis v. Vieron, 53 Tenn.App. 336, 382 S.W.2d 553 (1964).

Under Rule 24 of the Rules of Appellate Procedure abridgment of the record is encouraged, but the burden is upon the appellant to either (1) "have prepared a transcript to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal,"

or (2) if no transcript is available "a statement of the evidence of the proceedings from the best available means, including his recollection. This statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal." In light of the above, we conclude that the presumption heretofore noted continues, and that the issues raised by Mrs. Waters which must be resolved by a determination of the facts—which includes all, save, perhaps two—must be overruled.

In view of the foregoing, we think it would be of little help to have the deposition referred to in the Plaintiffs' motion made a part of the record, and it is for this reason that the motion is overruled.

Before leaving this point, we wish to make clear that we are not unmindful of the responsibility cast upon an appellee by Rule 24, relative to designating other parts of the record. We do not conceive it was intended that an appellee, to his own detriment should be required to rescue an appellant when the appellant himself has obviously failed to follow the mandates of Rule 24.

As to the two issues that might be said not to require a consideration of the facts, the first complains that the Court "erred in refusing to make findings of fact and conclusions of law." Examination of the record discloses that the Court's final order, not to mention the memorandum opinion delivered from the bench, specifically does so. While it may be the facts found and the law concluded are not in accordance with what Mrs. Waters conceives to be pertinent, they are sufficient upon the theory the Chancellor considered appropriate for a proper resolution of the case.

The second issue relates to the fact that Earl Hendry, former Chancellor of the 13th Chancery Division, was counsel for the Plaintiffs in the suit pleaded as res judicata to the present action and represented them subsequent to his appointment. The Appellant insists that this representation was in violation of T.C.A. 29-301,[1] and any judgment rendered therein would be void.

Plaintiffs counter by pointing out that T.C.A. 17-105[2] which prohibits judges and chancellors from practicing law makes an exception where they are employed prior to their election. Consequently, a threshold question as to this issue is which statute prevails. We resolve the question in favor of T.C.A. 17-105 for two reasons. First, the Act now codified in part as T.C.A. 17-105 was passed after those codified as T.C.A. 29-301, and it is arguable that the more recent Act repeals the earlier by implication. Moreover, we think it should prevail in any case because, as codified, T.C.A. 17-105 specifically addresses judges and chancellors, wherein T.C.A. 29-301 includes other public officials. In such cases we think the real intent of the Legislature can be gained from the statute addressing the specific rather than the general, and our discussion of the remaining issue will be predicated upon the theory that T.C.A. 17-105 is applicable.

---

1 29-301. Public officers prohibited from practicing.—Judges and chancellors are prohibited from practicing law in any of the courts of this state. The clerks of the several courts, and their deputies, are also prohibited from practicing in their own courts, or in any causes commenced, brought to, or carried from their courts, or commenced in any court from which an appeal lies to their court. Sheriffs and other executive officers shall not practice law in the county for which they were elected, or in any cause originating or pending in the courts of that county.

2 17-105. Practice of law.—No judge or chancellor shall practice law, or perform any of the functions of attorney or counsel, in any of the courts of this state, except in cases in which he may have been employed as counsel previous to his election.

Assuming arguendo that we may take judicial knowledge of the date Chancellor Hendry assumed office, and we are inclined to think that we may, and assuming further that the former judgment is subject to collateral attack in this manner, about which we have some doubts, it will be noted that the statute specifically permits a judge to appear in a case when he had been retained prior to his election.[3] The record does not disclose when Mr. Hendry was employed, and we think the burden was on Mrs. Waters to show he was employed after assuming office. Most importantly, it does not appear that this question was raised in the prior proceeding. Under these circumstances we do not think a violation of the statute would render a judgment void even if the exception did not apply.

Mrs. Waters conceded in oral argument that if Mr. Hendry had in fact been employed prior to assuming the bench, he would not be in violation of the statute if he appeared in a court other than the one which he presided, but made a strong argument that he should not appear as counsel "in his own court." In the first place, Mrs. Waters misconceives the judicial structure of this State. The Chancery Court for the 13th Chancery Division is a court of the State of Tennessee, not any individual temporarily holding the office of Chancellor. Moreover, we are frank to say we can see no real distinction, particularly so in non-jury cases, between a Chancellor or a Judge trying a case in a court over which he presides than in any other court of the State.

---

3 We construe "election" as used in the statute to mean assumption of office, because it would be anomalous to permit an appointed judge to accept employment and represent counsel between his appointment and the next general election in which he would be a candidate for office.

For the foregoing reasons the issues on appeal are found adversely to the Defendant, the Trial Court affirmed, and the cause remanded to the Chancery Court for Sevier County for such further orders, if any, as may be necessary. The costs of appeal are adjudged against the Defendant.

Houston M. Goddard, Judge

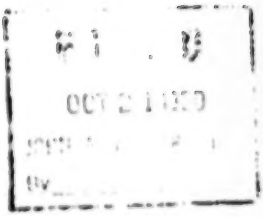
CONCUR:

Clifford E. Sanders, J.

Herschel P. Franks, J.

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION



FRED HENDERSON, et al.)
Plaintiffs-Appellees)
)
v.) SEVIER CHANCERY
)
MARGARET B. WATERS)
Defendant-Appellant)

OPINION ON PETITION TO REHEAR

Goddard, J.

Margaret B. Waters, Defendant-Appellant, files a petition to rehear which re-argues matters fully considered by the Court when the original opinion was rendered. The petition to rehear is accordingly overruled at the costs of the Appellant.

Houston M. Goddard, Judge

CONCUR:

Clifford E. Sanders, J.

Herschel P. Franks, J.

IN THE SUPREME COURT OF TENNESSEE, AT KNOXVILLE

FRED HENDERSON, et al,	)	
	)	
vs.	)	Sevier Chancery
	)	
MARGARET B. WATERS	)	Civil No. 10919

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

L. Harold Levinson and Frank S. Bloch, faculty members of Vanderbilt University School of Law, move this Court, pursuant to Rule 31, Tennessee Rules of Appellate Proceedure, for leave to file a brief and to appear in this cause as amici curiae.

Applicant, Frank S. Bloch is an associate professor of law and Director of Clinical Legal Education at Vanderbilt. Applicant L. Harold Levinson is a Professor of Law who teaches the course on Professional Responsibility at Vanderbilt. Amici do not represent either party in the litigation, nor do they represent Vanderbilt School of Law. Their interest in the case is that it raises issues which are important to the administration of justice and to the practice of law in Tennessee.

Although applicant for Permission to Appeal, Margaret B. Waters, has asserted many effective points in her pro se petition, Applicant Amici will, if permitted by the Court, add any appropriate expansion to the points raised by Applicant Waters. Most significantly, Applicant Amici wish to expand on the first issue raised by Applicant Waters--that the opposing attorney should not have been allowed to continue to represent his clients after he had been appointed a judge.

Applicant Waters alludes to, but fails to specifically address the confusion on this issue engendered by the direct conflict between the Code of Judicial Conduct, as adopted by the Tennessee Supreme Court, which prohibits a newly appointed judge from continuing to practice law and T.C.A. §17-105 which allows a newly appointed judge to practice and appear in these cases in which he had been employed prior to his elevation to the bench. If permitted to file a brief, Applicant Amici would specifically address this conflict between the mandates of the Supreme Court and of the legislature as regards the practice of law.

Additionally, Applicant Amici wish to address the related question of the constitutionality of T.C.A. §17-105. The basis of this question is whether the Tennessee Constitution vests exclusive jurisdiction in this Court to determine whether newly appointed judges may continue to practice and whether any legislation purporting to deal with the continued practice of law by jduges is unconstitutional as an encroachment by one branch of government on the domain of the other.

Applicant Amici are aware that the Tennessee Supreme Court has not yet decided whether to grant Applicant permission to appeal in this cause. Because it raises an issue of critical importance to the responsible practice of law in this state, Applicant Amici urge this Court to grant the Appeal.

Applicant Amici would move this Court for leave to file a memorandum of law on the issues raised in this motion if this Honorable Court feels that it would be of assistance to the Court in its decision whehter to grant Applicant Waters' Application for Permission to Appeal.

Further, should the Court grant the appeal in this cause, Applicant Amici move this Honorable Court for leave to file a brief and to appear in this cause in order to more fully address the issues raised in this motion.

Respectfully submitted,

Susan L. Kay
SUSAN L. KAY
Attorney for Applicant Amici Curiae
Vanderbilt Law School
Nashville, TN 37240
Telephone: (615) 322-6630

C E R T I F I C A T E

I hereby certify that a true and exact copy of the foregoing has been mailed, U.S. postage prepaid, to Charles Johnson, 148 Court Avenue, Sevierville, Tennessee 37866, attorney for Appellees, Margaret B. Waters, Hickory Corner Trailer Park, Route 12, Maryville, Tennessee 37801, and Honorable William Leech, Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219, on this the 23 day of December, 1980.

Susan L. Kay

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FRED HENDERSON, ET AL.	)	
	)	
	)	
VS.	)	SEVIER CHANCERY
	)	
	)	
MARGARET B. WATERS	)	

O R D E R

The motion by Vanderbilt University School of Law seeking Leave to File Brief as Amicus Curiae is denied.

This the 30th day of January, 1981.

Robert E. Cooper, Justice

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED
FEB 2 1981
JOHN A. PARKER, Clerk
By

FRED HENDERSON, ET AL.,)
APPELLEES)
)
)
VS.) SEVIER EQUITY
)
)
MARGARET B. WATERS,)
APPELLANT

O R D E R

On considering the application for permission to appeal and briefs filed in this case and the entire record the application of Margaret B. Waters is denied at cost of appellant.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

FILED
MAR 16 1981
JOHN [illegible], Clerk
By

FRED HENDERSON, ET AL.,)
RESPONDANT)
)
)
VS.) SEVIER LAW
)
)
MARGARET B. WATERS,)
PETITIONER)

O R D E R

On considering the Petition to Rehear and briefs filed in this case and the entire record the petition of Margaret B. Waters is denied at cost of the petitioner.

PER CURIAM

16-408. **Jurisdiction — Venue.** — The jurisdiction of the Court of Appeals shall be appellate only, and shall extend to all civil cases except those involving the constitutionality of a statute or city ordinance which is the sole determinative question in the litigation, the right to hold a public office, workmen's compensation, state revenue, mandamus, in the nature of quo warranto, ouster, habeas corpus in cases where the relator is being held under a criminal accusation or a rendition warrant issued by the governor of the state. All cases within the jurisdiction thus conferred on the Court of Appeals shall, for purposes of review, be taken directly to the Court of Appeals in the division within which the case arose, the eastern division to include Hamilton County and the western division to include Shelby County. As to all other cases the exclusive right of removal and review shall be in the Supreme Court. Any case removed by mistake to the wrong court shall by such court be transferred to the court having jurisdiction thereof, direct. [Acts 1925, ch. 100, § 10; Shan. Supp., § 6327a10; Code 1932, § 10618; Acts 1951, ch. 9, § 1; 1951, ch. 66, § 1; 1977, ch. 390, § 1; T.C.A. (orig. ed.), § 16-408.]

TENNESSEE PROCEDURE IN LAW CASES

§ 1800. Cases Involving Constitutional Questions --Whenever a constitutional question of merit, that is, a substantial and not a trivial question, has been made, and is a matter which cannot be avoided without denying the litigant his right to a decision, the appeal must be taken to the Supreme Court. It is manifest that a constitutional question which possesses no merit, such as has been determined by published opinions of the Supreme Court and which all intelligent members of the profession understand to be settled and not open to reargument, will not be deemed sufficient for passing over the Court of Appeals and going direct to the Supreme Court. And yet there is no reason for denying to a litigant the right to reargue a constitutional question when it is raised in good faith and when it presents new aspects or views which are calculated to provoke a reconsideration.

When a case involving constitutional questions is taken to the Court of Appeals and there passed upon, its decision is a nullity. Nevertheless, the Supreme Court will entertain a petition for a certiorari to remove the case from the Court of Appeals to that court.[8]

The jurisdiction is not limited to question regarding the validity of statutes; it extends to questions made as to the validity of resolutions of the legislature and also to questions arising upon the Constitution of the United States.[9]

The Court of Appeals will be the appropriate court to which to appeal all cases where the constitutional question arises only incidentally and where the case can be determined in that court without a consideration of the constitutional question.[10] But cases announcing this rule must be considered and distinguished from those announcing what must now be considered to be the test, namely, whether a constitutional question is advanced in good faith, and whether the settlement of the question will be determinative of the rights asserted. Hence, it will not do to say that the appellate court shall retain jurisdiction of a case involving a constitutional question simply because the case may be determined by disregard of that question. The rule should be stated thus: Where a constitutional question is advanced in good faith and where its decision will be determinative of a right directly involved in the litigation, the appeal should be to the Supreme Court, notwithstanding the fact that final decision may be arrived at upon other grounds.[11]

A case properly appealed or transferred to the Supreme Court as hereinabove stated will be heard in its entirety by the Supreme Court, that court passing upon all the other questions arising upon the record.[12]

But if the Supreme Court reaches the conclusion that the constitutional question is incidental or theoretical or unsubstantial and insufficient to control the decision, it will remand the cause to the Court of Appeals for consideration and determination.[13]

McPHERSON v. EVERETT
Cite as, Tenn., 594 S.W.2d 677 1980

1. Jurisdiction of this appeal as of right was properly perfected directly to this Court under Section 16-408, T.C.A., because the sole determinative question is one of constitutional interpretation and construction.

Best Copy Available

Supreme Court

The Supreme Court is composed of five justices elected for an 8-year term. The current court, elected August 1, 1974, consists of Chief Justice Robert E. Cooper, Associate Justices William H.D. Fones, Joseph W. Henry, Ray L. Brock, Jr., and William J. Harbison. The Constitution stipulates that not more than two justices may be elected from any one of the three Grand Divisions, and the Court is required to meet in Knoxville, Nashville, and Jackson.

The Supreme Court has jurisdiction to review cases appealed from the lower courts. The decision to review is dependent on the discretion of the justices in most cases, and upon the degree of importance of the issue in the case.

Most appeals come from the Court of Appeals and Court of Criminal Appeals. However, the Supreme Court must hear an appeal directly from a trial court in 1) cases which involve resolving a question of law only (not a factual issue), 2) cases involving workmen's compensation, and 3) cases involving constitutional or other public law issues. The major role of the Court is to resolve controversies about Tennessee law, and to establish guidelines for the lower courts to follow in decision-making.

The Chief Justice is the administrative head of the state court system. He has authority to assign special and retired judges, and to transfer judges to equalize caseload imbalances. The current Supreme Court justices have decided to rotate the position of Chief Justice every 18 months.

The Supreme Court has inherent power to supervise all the courts of the state and may prescribe rules of practice and procedure for all state courts with approval of the General Assembly. To aid the Court in this task, the Office of the Executive Secretary was created in 1963. The Executive Secretary is appointed by the Court and serves at its pleasure.

Jurisdiction

The jurisdiction of the Court of Appeals is appellate only; it has no original jurisdiction. T.C.A. 16-408 (1979 Supp.). The appellate jurisdiction of the Court of Appeals extends to all civil cases *except* those involving the following:

(1) The constitutionality of a statute or city ordinance which is the determinative question in the litigation. T.C.A. 16-408 (1979 Supp.).

(2) The right to hold public office. T.C.A. 16-408 (1979 Supp.)

(3) Worker compensation.

T.C.A. 16-408 81979 Supp.).

(4) State revenue. T.C.A. 16-408 (1979 Supp.).

Best Copy Available

FILED
FEB 23 1981
JOHN A. PARKER, CLERK
BY

Mr. John A. Parker, Clerk,
Supreme Court,
State of Tennessee,
P.O.Box 444, Knoxville 37901.

Re-Civil 10,17, Circuit 12,
Henderson et al.vs. Waters.

Dear Mr. Parker:-

Defendant-Appellant Margaret B. Waters, pursuant to Appellate Rule 27(d), is by this letter advising of pertinent and significant authorities that have just come to her attention regarding the exclusive jurisdiction of this case with the Supreme Court of Tennessee.

The Court of Appeals in its decision(Pg.6) gave an opinion on a constitutional question which was dispositive of the whole case.(Opin.Pg.5 & 6)(Appellate brief,Pg.1-4). This question concerned the validity of TCA 17-102, and whether Earl H. Hendry, chancellor of the 13th Chancery Division, could also act as attorney for plaintiffs, Elaine McMahan, Oscar Dunn, Conley Henderson, Fredhenderson, Glenn Henderson, Paul Henderson, in the case being heard in his own court. No question of fact was involved.

When a constitutional question is raised, the appeal must be taken to the Supreme Court as if a case involving constitutional issues is passed upon by the Court of Appeals, the decision is a nullity. Campbell Co. vs. Wright (1926)127 Tenn 1.

The jurisdiction of this case was exclusively with the Tennessee Supreme Court. City of Nashville vs. Dad's Auto Accessories Inc.(1926) 194 Tenn 194; 47 S Ct 20.

And should have been transferred to the Tennessee Supreme Court, Jetton vs. Clark Hardware Co. (1926) 3 Tenn App 379; Sec.1800, Higgins Tenn.Procedure in Law Cases.

When the determinative question is one of constitutional interpretation and construction, jurisdiction of an appeal as of right was to the Supreme Court. McPherson vs. Everett(1980) 594 SW2nd 677. Tenn.

The jurisdiction of the court of appeals does not extend to civil cases involving (1) the constitutionality of a statute...which is the determinative question in the litigation. 1978-1979 Annual Report,Office of the Executive Sec,Tenn S Ct, TCA 16-4-108.

In view of the foregoing,the Court of Appeals had no jurisdiction in the matter, either under statute or case law, and the appeal as of right, was directly to the Tennessee Supreme Court from the Chancery Court and should have been transferred when incorrectly docketed in the Court of Appeals.

Respectfully submitted,

-Hi- Margaret B. Waters

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

FILED
APR - 1 1981
JOHN A. PARKER, Clerk
By

Margaret Batterham Waters, Appellant

v.

Blaine McMahan, Oscar Dunn, Glenn Henderson, Paul Henderson Conley Henderson, Fred Henderson
Appellees

Civil No.10919
Sevier Chancery 52

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Margaret Batterham Waters, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order denying her petition to renear entered herein on March 16, 1981.

This appeal is taken pursuant to 28 USC Sec. 1257(2).

Margaret Batterham Waters

Margaret Batterham Waters
In propria persona
Mrs.M.B.Waters
Route 12, Box 413,
Maryville, Tenn.37801

I, Margaret B. Waters, certify that a copy of this Notice of Appeal is served by mail on:-

Atty.Gen. William M. Leech,
450 James Robertson Parkway,
Nashville, Tenn. 37219

Atty. Charlie Johnson,
148 Court Ave.
Sevierville, Tenn. 37862

Wynn & Wynn ..... Attys.
Sevierville, Tennessee

Tax Paid .... $ 3.25

GENERAL WARRANTY DEED

Know All Men By These Presents: That I, CHRISTINE MERRY SMITH of the State of California (hereinafter called grantor) for and in consideration of Ten Dollars and other valuable consideration in hand paid

have granted, bargained, sold and conveyed and do hereby grant, bargain, sell and convey unto BLAINE McMAHAN

of Sevier County, Tennessee

(hereinafter called grantee) the following described real estate: SITUATE in the 13th Civil District of Sevier County, Tennessee bounded as follows: By Knight on the west, Justus on the north; Valentino on the east and Company land on the south and lying on the east prong of Little Pigeon River. BEGINNING on bank of river and sweet gum corner to Knight; thence northward up ridge to a black gum corner to D. C. Knight; thence northward along the side of the ridge to a spotted oak on the side of the ridge; thence westward down the hill to a rock corner; thence north west to a black oak corner on D. C. Knight's line; thence north east to a white oak on top of Locust Ridge on side of Ridge Road; thence south east with the Locust Ridge Public Road to a spotted oak on top of ridge; thence south west to a poplar and rock corner near the mouth of branch; thence down the river to the BEGINNING, and containing 50 acres, more or less.

FOR title and further description see Deed Book 144 page 233; Book 101 page 27; Book 81 page 291; Book 74 page 486, Register's Office, Sevier County, Tennessee.

with the hereditaments and appurtenances thereto appertaining, hereby releasing all claim to homestead and dower therein.

To Have and To Hold said premises unto the said grantee his heirs and assigns, forever. Grantor covenants that she is lawfully seized and possessed of said premises; has a good and lawful right to convey same; that same are unincumbered

and that grantor will forever warrant and defend said premises and the title thereto against the the lawful claims of all persons whomsoever.

Witness our hands this 20th day of October 19 66

Christine Merry Smith
Christine Merry Smith

CONNIE DAVIS
Notary Public, State of California, Principal Office in Orange County
My Commission Expires September 11, 1967

STATE OF TENNESSEE
COUNTY OF SEVIER

CALIFORNIA
ORANGE

Before me, the undersigned authority, personally appeared the within named bargainor..... Christine Merry Smith with whom I am personally acquainted and who acknowledged that she executed the foregoing instrument for the purposes therein contained.

Witness my hand and Official Seal at office in said State and County this 20th day of October 19 66

My Commission expires .....

CONNIE DAVIS
Notary Public, State of California, Principal Office in Orange County
My Commission Expires September 11, 1967

Notary Public
CONNIE DAVIS
My Commission Expires September 11, 1967

Received for record this 25 day of Oct. 1966 at 3:12 P. M. Noted in Note Book 16, page 364, Item No. 7264

Edna Dameron Register

BOOK 156 386 - J -

Prepared by:-
Christine Merry Smith,
27041 Camino de Estrella,
Capistrano Beach, California 92624

RESCISSION OF DEED

NOTICE is hereby given:-

I, CHRISTINE MERRY SMITH, being duly sworn, depose as follows:

I hereby rescind a certain deed, dated October 20, 1966, and recorded October 25, 1966, Deed Book 156, Page 386, Sevier County, Tennessee, Register of Deeds office, noted in Note Book 16, Page 364, Item No. 7266, District 13, Parcel 12-6-3, Locust Ridge Road, on which I am the purported grantor.

This RESCISSION is made on the grounds that this deed, purportedly signed by me, granted land in which I did not have any right, title or interest, and to which I have never claimed any right, title or interest.

I have consistently testified in answers to interrogatories, Case 73-1820-CC, Federal District Court, Los Angeles, California, and through my attorney in other pleadings, under penalty of perjury, that I have never believed that I had any interest in this property and never intended to convey it to anyone and never knowingly signed a deed conveying it to anyone, and never received any compensation for any deed purportedly conveying it.

I have never received, nor has anyone acting in my behalf received, or claimed to have had delivered to me, or filed in any court or register of deeds office, any deed, will or other conveyance, or paper giving me any right, title or interest of any kind in the aforementioned land.

It is the intent and purpose of this NOTICE to give such notice of RESCISSION as may be required by the laws of the State of Tennessee, in such case.

Christine Merry Smith
CHRISTINE MERRY SMITH

Subscribed and sworn to before me
April 20, 1977
(Date)
Susan L Gold
Notary Public in and for the County of Los Angeles
State of California

OFFICIAL SEAL
SUSAN L. GOLD
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires April 8, 1978

STATE OF TENNESSEE, SEVIER COUNTY
The foregoing Instrument and Certificate were noted in
Note Book 24 - Page 73 A/K/A/ Book A-14, Page 314 Vol 7-A
Item No. 1231 Recorded 23 Pieces Book 51 Page 917
State Tax ____ Fee ____ Recording 4.00 Ct. House Fund 1.00
Total 5.00 Receipt 22.7 Nov 9 '77
Witness My Hand
Register

-K- 917

-26-

-L-

We set up your daughter
We got you out of the line of fire
We burnt up your car.
We ran you out the Haven cabin
Get out of Town. Forget the farm. Or it will
be your life next

Mrs. M.D Waters
General Delivery
Weyauwega
Wi. 54983

ABSTRACT OF TITLE

Located in District 13, Locust Ridge Road, Sevier County, Tennessee containing fifty (50) acres more or less. Parcel No. 12-6-5, presently Tax Tract D 13-86-84

This property is wild, uncultivated land, with no dwellings or other buildings. There is presently no adverse possession and none has ever been claimed. The Waters family, who moved from the property on September 4, 1968 were the last persons to occupy it. It is bounded on the south by the East Prong of the Little Pigeon River; on the west by the land of the Mary Henderson Boarders; Paul Ford Conley; Glenn-Oscar Dunn; and by Sam Ellis (in 1941 this adjacent property was conveyed to Hazel Dunn and wife, Ruby, by deed of H. H. Dunn and wife, Minnie, recorded Dd Bk. 58, Pg. 186, Register of Deeds office, Sevier County, Tenn.); on the north by the Locust Ridge Road and on the east by company land.

1. M.N. Ellis and wife, Ethel Ellis to E.A. Ellis and wife, N. L. Ellis
Warranty deed; date of instrument: May 7, 1919; Filed: May 10, 1919; Recorded in Book 61, Page 145, Register of Deed's, Sevier Co. Tenn. Consideration: $450.00 (four hundred dollars); Estate conveyed: Fee simple. No dower.

Description: Beginning on bank of the river and sweet gum corner to D. C. Knight, thence northward up the ridge to a black gum corner to D. C. Knight, thence northward along the side of the ridge to a sprained oak on the side of the ridge, thence westward down the hill to rock corner, thence northward to a black oak corner on D. C. Knight line, thence northward to a white oak on top of Locust Ridge on side of ridge, thence southeast with Locust Ridge to a sprained oak on top of ridge, thence southeast to a pointer and rock corner near the mouth of the branch, thence down the river to the Beginning, containing by an unknown 50 acres, more or less.

Regularly signed, sealed, witnessed, acknowledged and delivered.

2. E. A. Ellis and wife, N. L. Ellis to Sallie Brown
Warranty deed; date of instrument: December 20, 1935; Filed: December 23, 1935; Recorded in Book 74, Page 466, Register of Deeds, Sevier Co., Tenn. Consideration: $400.00 (four hundred dollars); Estate conveyed: Fee simple; No dower or encumbrances.

Same description as M. N. Ellis and Wife, Ethel Ellis warranty deed. Regularly signed, sealed, witnessed, acknowledged and delivered.

3. Sallie Brown, Widow to Margaret Waters
Warranty deed; date of instrument: October 27, 1941; Filed: October 27, 1941; Recorded in Book 81, Page 291, Register of Deeds, Sevier Co., Tenn. Consideration: $500 (five hundred dollars); Estate conveyed: Fee simple; Mortgage released.

Same description as M. N. Ellis and wife, Ethel Ellis Warranty deed. Regularly signed, sealed, witnessed, acknowledged and delivered.

4. Margaret Waters to Don Waters
Deed of instrument: September 8, 1948; Filed: September 8, 1948; Recorded in Book 101, Page 27, Register of Deeds, Sevier Co., Tenn. Consideration: $1.00 (one dollar) and the further consideration of love and affection; No estate conveyed.

This deed is invalid for lack of delivery as it was not delivered to Don Waters before his death, July 3, 1964, as evidenced in Note Book 10, Page 98, Item 1289, dated September 8, 1948, Register of Deeds, Sevier Co., Tenn. There is also an affidavit of forgery and nondelivery of deed on record in Book 51, Page 644, dated April 25, 1977 and filed May 9, 1977, recorded in Misc. Bk. 51, Pg. 644 Register of Deeds, Sevier Co. Tenn. Don Waters had no knowledge of this deed and did not claim the Margaret Waters farm through this or any other deed as evidenced by letter of Don Waters, dated February 7, 1964, filed November 10, 1976, recorded Misc. Bk. 49, Pg. 447, Register of Deeds, Sevier Co., Tenn.

5. Christine Morry Smith to Blaine McMahan

General Warranty deed; date of instrument: October 20, 1966; Filed: October 29, 1966; Recorded in Book 144, Page 386, Register of Deeds, Sevier Co., Tenn. Consideration: as indicated by tax stamp, $7500.00 (Twenty five hundred dollars); No estate conveyed.

This deed is invalid to pass title to any property due to lack of title in the purported grantor and no consideration. On May 16, 1977, Christine M. Smith filed in the Sevier County Register of Deeds office Misc. Book 51, Page 917, a retraction of this deed, denying that she either claimed to have or had any right, title or interest in the property, that she never knowingly signed a deed conveying it to anyone and never received any consideration for any deed purportedly conveying it. After recording, the retraction was returned to Christine M. Smith at her California address, Note Book 25, Page 92, Item No. 1831. Christine M. Smith made the same statement of lack of ownership or claim of ownership of the Margaret Waters farm through her attorney, Federal District Court, Los Angeles, Cal., Case No. 73-1620-EC, dated January 29, 1975, filed June 16, 1976, recorded Misc. Book 47, Page 503, Register of Deeds, Sevier Co., Tenn.

Blaine McMahan is presently trustee of Sevier County, and has been since 1962. There is no record of any legal action by Blaine McMahan to defend his claimed title to the Waters farm or to deny his purported grantor, Christine M. Smith's sworn statements of her lack of any right, title or interest in the Waters farm. Therefore it is presumptive that the signature of Christine Morry Smith on this deed was produced either by fraud or her name was forged.

6. Blaine McMahan et ux to Fred Henderson et al
General Warranty deed; date of instrument: December 23, 1969; Filed: January 24, 1969; Recorded in Book 174, Page 345, Register of Deeds, Sevier Co., Tenn. Consideration: $4000.00 (five thousand dollars); No estate conveyed.

This deed is invalid to pass title to any property due to lack of ownership in the purported grantor. At the conclusion of the description is the notation "for title and further description, see Dd. Bk. 144, Pg 233" ---

7. Don Waters to Christine Morry Smith

Warranty deed; date of instrument: June 3, 1963; Filed: May 27, 1964; Recorded in Book 144, Page 233, Register of Deeds, Sevier Co., Tenn. Consideration: $ 100.00 (one hundred dollars); Estate conveyed: Description ---

District 13 on Locust Ridge Road known as the Locust Ridge Farm. Laying along the Locust Ridge Road, bounded on the East by Cove Smith, on the South by the Little Pigeon River and Dallas Dunn. On the West by the Beckmeyer property, North to the Locust Ridge Road.

This description is invalid to pass title to any property as it is an faulty the property it purports to describe is not ascertain on any map. There is also a dual claim deed from the grantor Waters to Don Waters with the same description.

Margaret Waters to Don Waters

Quit claim deed; date of instrument March 10, 1960; Filed: January 27, 1962; Recorded in Book 137, Page 161, Register of Deeds, Sevier Co., Tenn. Consideration of $1.00 and other considerations; Estate conveyed:

Notary [illegible] as bonds not expired, no seal on instrument.

However Don Waters did own an approximately five (5) acre "stay place" District 13 Sevier County conveyed to him by deed of Mildred Williams.

Mildred Williams to Don Waters

Warranty deed; date of instrument: June 8, 1965; Filed: June 18, 1976; Recorded in Book: Book 47, Page 508, Register of Deeds, Sevier Co., Tenn. Consideration $1.00 (one dollar) and other considerations; Estate conveyed:

Description: Situate in District 13, of Sevier County, Tennessee bounded as follows: On the West by Mildred Williams on the North by East Prong of the Little Pigeon River, on the East by Mildred Williams and on the South by the public road: BEGINNING at an iron stake and black oak at the North edge of the gore and running in a Southeasterly direction with the gore for a distance of about 640 feet to a rock and iron stake, thence in the Westerly direction to the Little Pigeon River and iron stake, thence down the river, including an island to a iron stake beyond the island, thence up the hill to the gate and iron stake and black oak beginning, and encompassing about two acres, more or less, the corners being marked. Being part of the property conveyed from McKinney Williams by Mildred Williams as his son and only known living heir, being the same property deeded to McKinney Williams by deed of Ely Williams et ux, June 10, 1887, of record Deed Book 10, Page 199, Registry signed, sealed, witnessed, acknowledged and delivered.

There is also a lease on tax deed May 24, 1940, between Mildred Williams and Don Waters for one (1) acre of this same property.

Therefore it may be assumed that the deed from Don Waters to Christine M. Smith purported to convey a parcel of property different than the subject and Hanson on May 4, 1976, Federal District Court, Los Angeles, Cal. Case 73-1620 CC(R) held 4A. That Defendant Christine M. Smith wrongfully conveyed said real property in Tennessee (five acre stay place) to others and 4D. that title to said real property did not reside in defendant (Christine M. Smith) at the time of Don Waters death but resided in Don Waters. This Finding of Facts and Conclusions of Law and Judgment, dated May 4, 1976, was filed June 8, 1976, recorded Misc. Book 47, Page 1616, Register of Deeds, Sevier Co., Tenn. Since the Judgment is recorded, it should be accorded full faith and credit by Tennessee.

8. On January 28, 1971 Margaret Waters, through her attorney Philip P. Durand, filed a complaint in Chancery Court, Sevier Co. Tenn. alleging forgery of the Margaret Waters to Don Waters, September 8, 1948 deed. Dd Bk. 101, Pg. 27, Sevier County, Tenn. Register of Deeds purportedly conveying her farm to Don Waters and that the March 10, 1960 quit claim deed recorded Bk. 137 Pg. 161, was also a forgery.

This complaint was styled Case 8090, Waters et al. Paul, Fred, Conley, Glenn, Henderson, Oscar Dunn, Blaine and George McMahan and Christine M. Smith. On March 15, 1971, Earl R. Hendry filed a motion to dismiss as attorney for all defendants. Earl R. Hendry was also the chancellor, 13th Chancery Division. Defendant Blaine McMahan alleged that he acquired title to the Margaret Waters fifty acre farm through deed of Christine M. Smith, dated October 20, 1966, of record Sevier Co., Tenn. Register of Deeds, Lic. Bk. 144, Pg. 386, claiming her title through the five acre stay place deed of Don Waters, dated June 3, 1963, of record Sevier County Register of Deeds, Bk. 144 Pg. 233.

On January 3, 1972, defendants filed an answer to the complaint denying the allegation of forgery. On the same date, they also filed a Third Party Complaint, alleging that Blaine McMahan actually purchased the property from L.R. Carpenter. Defendants entered into evidence, Case 8090:

a. A copy of a letter dated September 8, 1966, to Christine M. Smith in which L.R. Carpenter described the Don Waters property and makes an offer of $1400.00 (one thousand, six hundred dollars); file #.

b. A copy of a $1400.00 cashier's check, No. 427844, dated October 24, 1966, purchased by L.R. Carpenter from Park National Bank, Knoxville, Tenn., and endorsed by Christine M. Smith.

c. A copy of a personal check, dated October 8, 1968, for $2481.25 (two thousand, four hundred and eighty five dollars, twenty five cents), to L.R. Carpenter Real Estate Co., and signed by Blaine McMahan.

Defendants, in their Third Party Complaint, Waters et al, by reference from the deposition of Christine M. Smith, Case 8090, filed on May 24, 1971, has statements after having shown a photocopy of the general warranty deed, dated October 20, 1966, between herself and Blaine McMahan for the Margaret Waters farm --" I never gave McMahan anything. I never gave him a deed. This may be what Carpenter gave, but I never saw this deed."

This Third Party Complaint oath and bond is signed by Earl R. Hendry, Blaine McMahan and Paul Henderson.

On March 24, 1972, the matter was heard before William P. Hawkins sitting by interchange for Earl R. Hendry who commuted as the attorney for defendants in the case being heard in his own court. Margaret Waters denied signing either of the two questioned deeds. She produced evidence that both she and her husband, Don Waters, were in Oxford, Maryland, on the day the September 8, 1948, deed between herself and Don Waters was purportedly signed by her in Sevier County, Tenn. This evidence was uncontroverted by defendants.

Margaret Waters also produced as evidence an agreement with Don Waters that he pay the taxes on her farm in return for camping privileges. She also produced certain copies of yearly letters written to the tax collector, Sevier County Courthouse, enquiring if the taxes were paid on her farm. Blaine McMahan affirmed receiving this correspondence. Transcript, Case 8099, Pg. 345.

The Register of Deeds, Sevier County, Elsie Tarwater, brought in the original September 8, 1948 Margaret Waters-Don Waters deed, stating that after it was recorded, it had remained undisturbed in her office safe. Transcript, Pg. 343.

Defendants lived a copy of a deed, dated October 20, 1966, between Christine M. Smith and L.R. Carpenter in support of the allegations of the Third Party Complaint, that he was their actual predecessor in title. Christine M. Smith testified that she received $1400.00 from Mr. Carpenter for the sale of this property, being the Don Waters five acre stay place. The Smith-Carpenter deed has the same description as the June 3, 1963, deed from Don Waters to Christine M. Smith. It was acknowledged before the same notary, Corrine Dunn, on the same date, October 20, 1966, as the deed purportedly conveying the fifty acre Margaret Waters farm from Christine M. Smith to Blaine McMahan.

Defendants presented a handwriting expert who emphatically stated that the same Margaret Waters, who signed the exemplars, signed the September 8, 1948, warranty deed between Margaret Waters and Don Waters, and the 1960 quit claim deed for the Don Waters stay place. Chancellor Hendry disallowed the handwriting expert on the grounds that he had not seen any of Sarah Sellers and he advised this expert if (hearing the arguments) would not cause him to change his opinion." Pg. 283, Transcript, Case 8099. The matter was continued for further handwriting testimony.

On October 9, 1972, defendants presented another handwriting analyst who also stated that the 1960 quit claim deed and the September 8, 1948 deed were both signed by the same person, after testing the exemplars. The court agreed that they were signed by the same person. This court also heard the description of the June 3, 1963, deed between Don Waters and Christine M. Smith was not so ambiguous or erroneous as to render said deed void, and that plaintiff had not carried the burden of proving the June 3, 1963, deed between Don Waters and Christine M. Smith was a forgery.

The court also held that one of the deeds defendants had filed in the case was a "fabrication." Opinion Pg. 2. Defendants petitioned the Tennessee Court of Appeals for writ of error to review Third Party Complaint against L. R. Carpenter, alleging he was their actual predecessor in title, but said they "should not attempt to explain, justify, defend or otherwise deal with this obvious fabrication." Pg. 9, defendants' Tennessee Court of Appeals brief, Case 8099, No. 19, Sevier County, filed April 23, 1973.

The Tennessee Court of Appeals affirmed on July 11, 1973. The Tennessee Supreme Court denied a petition for writ of certiorari on December 3, 1973. The United States Supreme Court refused to take jurisdiction on June 10, 1974. A ex parte, regarding Case 8099, dated and filed February 20, 1973, was recorded Misc. Book 35, Pg. 378, Register of Deeds, Sevier Co., Tenn.

Case 8099 and the subsequent appeals resulted in no determination of title to either the fifty acre Margaret Waters farm, District 13, Sevier County, or the five acre Don Waters "stay place", District 13, Sevier County.

However the court records, Case 8099, do contain judicial admissions and sworn statements by the several parties, binding on them, to establish the legal title of the fifty acre Margaret Waters farm in Margaret Waters. Christine M. Smith admitted under oath that she had no knowledge of the existence of the Don Waters-Christine M. Smith, June 3, 1963, deed until she found it among his papers in his trailer sometime after his death. Therefore this deed is ineffectual to pass title to the stay place to Christine M. Smith due to nondelivery and lack of consideration. Don Waters died intestate in Orange County, California, on July 3, 1964. There is an affidavit of heirship, recorded Misc. Bk. 34, Pg. 349, Sevier Co., Tenn., listing Margaret Waters Crane as Don Waters only child.

No conveyance is on file in the Register of Deeds office from L.R. Carpenter to anyone, conveying any District 13, Sevier County, Don or Margaret Waters or Christine M. Smith property.

9. (Opinion of Title: Margaret Waters has legal title to her fifty acre, District 13 farm, Parcel 12-6-5, now Tax Tract D 13-86-84, conveyed to Don by warranty deed of Sallie Brown, October 27, 1941.

This of record, legal defects of the following:

1948 Margaret Waters-Don Waters deed -- nondelivery, October 27, 1964 Christine M. Smith-Blaine McMahan deed -- no consideration to Christine M. Smith, no legal title as grantor. Previously dwelt upon for title and further description purported to convey other nonexisting tract property (Don property five acre stay place).

December 23, 1968, Blaine McMahan et ux -- Fred Henderson et al deed -- no legal title in grantor.

-- as such that no right, title or interest has been conveyed by them from Margaret Waters to anyone.

DON WATERS' "STAY PLACE"

Margaret Waters did not join in the June 3, 1963, Don Waters-Christine M. Smith conveyance. Therefore her unmarried dower rights were a future lien on the property.

October 20, 1966, deed from Christine M. Smith to L.R. Carpenter, admitted to be a forgery by defendants same description as Don Waters, June 3, 1963, deed to Christine M. Smith.

The decision, Federal District Court, Los Angeles, Cal., Case 73-1620-CC(R), held that they take to the property rebuttal to Don Waters at the time of his death. Oscar Dunn now claims to have possession of the "stay place."

10. Tax Statement

1978 taxes on Parcel 12-6-5, Locust Ridge Road, District 13, were $49.75, and were paid on February 1, 1977, by Oscar Dunn, $3.95, by Fred Henderson, $39.80, Receipt No. 16988. The fifty acre property was valued at $5000 (five thousand dollars) and assessed at $1750 (one thousand, two hundred and fifty dollars). The tax rate was $3.98.

1977 taxes: The property is now part of Tax Tract D11-86-84, assessed to Fred Henderson et al, with valuation of $21,000.00 (twenty-one thousand dollars) and assessment of $5,460.00 (five thousand, four hundred dollars). The 1977 bill is unpaid by Henderson's et al as of June 1, 1978, in the amount of $108.80, Receipt No. 012799. The tax rate is $2.80.

The Waters Farm and the Griffin farm were separated by lands of Sallie Brown. On January 29, 1971, Sam Ellis and wife, Mildred, sold a property, no acreage given, to the four Henderson brothers, Paul, Conley, Fred, Glenn, to Oscar Dunn and to himself for the consideration of $600.00 (six hundred dollars), and exchange of property.

This property was bounded on the north by the Locust Ridge Road, on the east by the Waters farm and on the west by the Griffin farm and formed a small corridor connecting the two properties, Waters and Griffin farms.

This "corridor" deed reserves, "Saving a portion of the same property conveyed to Sam Ellis et ux by deed of Dallas Dunn, dated January 10, 1950, recorded in Dd Bk. 114, Pg. 443, Register of Deeds, Sevier Co., Tenn."

The Dallas Dunn deed states as the previous recorded instrument in title, "This land was conveyed to the grantors herein (Dallas and wife, Ora Dunn) by deed registered in Books No. 58 and 67, Pages 186 and 241 in the Register's office, Sevier County."

Warranty deed, dated July 8, 1947, Bk. 58, Pg. 186, conveyed two tracts, one of 15 acres, the other of 5 acres, from H.H. (Hassler) Dunn and wife, Minnie Dunn, to Hazel Dunn and wife, Ruby Dunn.

Warranty deed, dated June 3, 1944, Book 67, Pg. 470 and Pg. 241, conveys the above mentioned five acres from Mark Dunn and wife, Lucinda Dunn to H.H. (Hassler) Dunn.

Tax Tract D13-86-84 is listed as 117.5 acres and combines the fifty acre Waters farm with the Griffin and "corridor" tract.

The taxes on the Don Waters "stay place" were assessed as part of the Margaret Waters farm taxes by agreed agreement between Mildred Williams and Don Waters. This agreement was affirmed by testimony and exhibits, Case 73-1620-CC(R) and is counted to be correct by all parties.

11. The annexed abstract is a correct abstract of the title of the farm, District 13, Locust Ridge Road, Sevier County, Tenn., formerly Parcel 12-6-5, as fully described in the introduction of said abstract.

Said abstract correctly shows all matters affecting or regarding to the said title which are of record or on file in said county, including conveyances, deeds, land and other liens, by pendency, particulars of authority, or agreements to pay taxes, suits pending by or against purported owners of record, notices of special proceedings from United States and state courts, and copies of judgments from United States and state courts against purported record owners.

Said abstract also shows orders of attachment by or against any party who has been a purported owner of record of said land, powers appointments, between said titles, and recorded conveyances of deeds of official powers of ownership or claim of ownership by said parties.

Present purported owners of record are Fred Henderson, Fred Henderson, Glenn Henderson, Conley Henderson, Oscar Dunn, Deed Book 174, Page 345, Register of Deeds Sevier County, Tennessee.

STATE OF ARIZONA
COUNTY OF SANTA CRUZ

Margaret Batterham Waters, having been first duly sworn, deposes and says:

That she has prepared and read the foregoing ABSTRACT OF TITLE in open and on personal knowledge, and knows the contents thereof, and that the same is true and correct to the best of her knowledge except as to those matters that are herein stated upon her information or belief, and as to those matters she believes it to be true.

Recorded Misc. Bk. 58, Pages 1-8, June 26, 1978
Register of Deeds, Sevier Co., Tenn.

Margaret Batterham Waters

Subscribed and sworn to before me this 19th day of June, 1978

OSCAR C. SOTO
Notary for said county and state
MY COMMISSION EXPIRES AUGUST 23, 1979

-M-

Best Copy Available

17-105. Practice of law.—No judge or chancellor shall practice law, or perform any of the functions of attorney or counsel, in any of the courts of this state, except in cases in which he may have been employed as counsel previous to his election. [Code 1858, § 3912 (deriv. Acts 1851-1852, ch. 331, § 1); Shan., § 5705; Code 1932, § 9891.]

Cross-References. County judges authorized to practice, § 16-708.

Practice of law prohibited, § 29-301.

NOTES TO DECISIONS

1. Purpose and Policy.

The practice of law by a chancellor or circuit judge is contrary to public policy. Reynolds v. Chumbley (1940), 175 Tenn. 492, 135 S. W. (2d) 959.

2. Election Contest—Rights of Judge Elect.

Statutory provision refers to an acting judge, and not to a judge elect who has been kept out of office by an election contest; and practice of law pending such contest does not defeat successful contestant's right to salary from the beginning of the term for which elected. State ex rel. Barham v. Graham (1930), 161 Tenn. 557, 30 S. W. (2d) 274.

Collateral References. 30 Am. Jur., Judges, § 40.
48 C. J. S., Judges, § 9.

29-301. Public officers prohibited from practicing.—Judges and chancellors are prohibited from practicing law in any of the courts of this state. The clerks of the several courts, and their deputies, are also prohibited from practicing in their own courts, or in any causes commenced, brought to, or carried from their courts, or commenced in any court from which an appeal lies to their court. Sheriffs and other executive officers shall not practice law in the county for which they were elected, or in any cause originating or pending in the courts of that county. [Code 1858, § 3969 (deriv. Acts 1817, ch. 51, § 2; 1827, ch. 63, § 1); Shan., § 5780; Code 1932, § 9973.]

Text Books. Gibson's Suits in Chancery (4th ed., Higgins and Crownover), § 1173.

Law Reviews. Illegal Practice of Law by Laymen, 20 Tenn. L. Rev. 278.

NOTES TO DECISIONS

1. Clerk and Master as Party Litigant.

Where clerk and master signed bill as party litigant and not as attorney such fact although grounds for his removal was not grounds for dismissal of the suit. Walsh v. Rose (1951), 29 Tenn. App. 78, 193 S. W. (2d) 118.

Collateral References

30 Am. Jur., Judges, § 40.
14 C. J. S., Clerks and Courts, § 90; 48 C. J. S., Judges, § 9.
Judicial office, what amounts to practice of law within constitutional or statutory provision making such practice a condition of eligibility to, or forbidding such practice by one holding a judicial position. 100 A. L. R. 508.

CHAPTER 4

JUDICIAL CONFERENCE

17-406. Rules of conduct for judges.—**The conference shall have full power and authority to prescribe rules of official conduct of all judges, the same to be in compliance with the Code of Judicial Ethics as promulgated by the American Bar Association but not otherwise. [Acts 1953, ch. 129, § 5 (Williams, § 738.17).]**

RULES OF SUPREME COURT

CODE OF JUDICIAL CONDUCT Rule 13

CANON 5. A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

E. Arbitration. A judge should not act as an arbitrator or mediator.
F. Practice of Law. A judge should not practice law.

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FILED
AUG 10 1981
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1980

NO. 80-6655

MARGARET B. WATERS,

Petitioner

versus

CONLEY HENDERSON, ET AL,

Respondents

MOTION TO DISMISS OR AFFIRM

Pursuant to Ruly 16 (1) (6) of the Rules of the Supreme Court of the United States, appellee moves the Court to dismiss the appeal herein for the reasons and on the grounds set forth in the Brief in Opposition to Petition for writ of certiorari.

Respectfully Submitted,

Charlie R. Johnson,
Attorney for Appellees

10/

AUG 10 1981
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT
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OCTOBER TERM 1980

NO. 80-6655

MARGARET B. WATERS,

Petitioner

versus

CONLEY HENDERSON, et al.,

Respondents

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

CHARLIE R. JOHNSON*
148 Court Avenue
Sevierville, Tn. 37862

R. B. Hailey**
Court Avenue
Sevierville, Tn. 37862

*Admitted to practice in Tennessee; not admitted to practice in the U. S. Supreme Court.

**Admitted to practice in Tennessee and the United States Supreme Court.

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The issue of whether the attorney acted improperly in continuing to represent respondents in a previous action fails to present a substantial federal question, is supported by adequate state law, and is res adjudicata.

CONCLUSION..... 8

TABLE OF CASES, STATUTES AND AUTHORITIES CITED

CASES	PAGE
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QUESTION PRESENTED

Whether petitioner's petition for writ of certiorari should be granted when the issue petitioner presents has been fully, finally and fairly litigated in a previous action instituted by petitioner against respondents.

STATEMENT OF CASE

This is a Petition for Certiorari from an order of the Supreme Court of Tennessee, sitting at Knoxville, Tennessee, denying Petitioner's application for permission to appeal on February 2, 1981, styled Fred Henderson, et al v. Margaret B. Waters. The facts underlying the Petition are as follows: The Petitioner herein filed an action as plaintiff in the early 1970's seeking to reobtain title to a piece of property in Sevier County which was previously conveyed away by petitioner and at the time of the action was owned by respondents. Sevier County Chancery #8099. Respondents at that time were represented by Earl W. Hendry, who later was appointed Chancellor of the 13th District of Tennessee. Respondents upon Mr. Hendry's appointment, then obtained other counsel to proceed with the litigation. Judgment was rendered in favor of respondents and against Petitioner in that action. Said judgement was appealed by Petitioner on the grounds respondents' attorney, who later was to become chancellor,

practiced law in his own court. In fact, the cause was heard by Chancellor William Newkirk, sitting by designation and interchange. The Court of Appeals for the Eastern Section of Tennessee at Knoxville upheld the judgment of the chancellor, specifically finding no impropriety in the representation of respondents' attorney. The Supreme Court of Tennessee also upheld the decision. Petitioner then filed for certiorari to the United States Supreme Court on the grounds respondents' attorney was "practicing law in his own court". Certiorari was denied. Waters v. Henderson, 94 S.Ct. 3062, 417 U.S. 938, 41 L. ed. 2d 661 (1974).

The present action which gives rise to this petition was filed by respondents on August 12, 1978, and sought to restrain petitioner from trespassing on respondent's property and filing documents which amounted to clouds on respondent's title. Sevier Chancery #10919. As a defense, Petitioner once again alleged the first action No. 8099, was void because respondent's attorney became chancellor after being retained by respon-

dents. Upon a full hearing of the matter, judgment was rendered for respondents, from which timely appeal was taken to the Court of Appeals, Eastern Section, by Petitioner. The Court of Appeals affirmed the judgement of Sevier County Chancery Court in favor of respondents, entered a decree making the injunction permanent, and denied a petition to rehear. The Appeals Court further questioned Petitioner's right to collaterally attack the first action without specifically deciding the issue. Petitioner then appealed to the Supreme Court of Tennessee, which denied the application and affirmed. Petitioner now seeks review in this Court.

REASON FOR DENYING THE WRIT

I

This Petition for Certiorari should be denied for the following reasons:

a.) there exists adequate state law grounds to support the decision below;

b.) the petition fails to present a substantial federal question.

c.) the matter upon which the petition is submitted is res adjudicata.

The Chancery Court of Sevier County, Tennessee, the Court of Appeals, Eastern Section of Tennessee and the Supreme Court of Tennessee have collectively considered petitioner's contention herein and found the argument to be lacking in merit. This Court denied a petitioner's earlier petition for certiorari on this precise issue. Waters v. Henderson 94 S.Ct. 3062, 417 U.S. 938, 41 L.Ed 2d 661 (1974). The basis upon which all courts have denied petitioner's contention has been the existence of a Tennessee statute, Tenn. Code Anno. 17-1-105,

which specifically allows a chancellor to "wind down" his practice after being appointed to the bench, if the chancellor was retained prior to appointment. Specifically, no impropriety in the State proceedings was found by any court which has considered the question. Respondent wishes to emphasize that this question has been reviewed twice by all Tennessee trial and appellate courts, and once before by this Court. The Tennessee statute has been found to apply specifically to the present action, and to allow the representation which o urred here. It is therefore respectfully submitted by respondents herein that there exists adequate grounds of state law on which to uphold the decision below, and that the present petition fails to present a substantial federal question.

More important is the fact that the issue petitioner now takes to raise is res adjudicata. The matters on which petitioner bases this petition, and on which the prospective amici base their motion, were tried previously and adjudicated

fully in action entitled Waters v. Henderson, No. 8099 in the Chancery Court of Sevier County, No 51 Sevier Chancery in the Court of Appeals of Tennessee, Eastern Section, and No. 51 in the Supreme Court of Tennessee. A final and valid judgment was duly made and entered in such action adverse to petitioner herein and in favor of respondent herein. The opposing litigants in such prior action were the identical persons who are the parties to the instant action, and the matters litigated in the prior action were the same matters at issue in the present petition. The judgment in the prior action remains in full force and effect.

Respondent therefore respectfully submits that the issue raised in this petition and in the motion of prospective amici is res adjudicata and cannot be again litigated in this subsequent action between these same parties. Angel v. Bullington, 330 US 183, 91 L. Ed 832, 67 Sct. 657. The litigation between the parties has already spanned one decade, and need not be protracted further.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the petitioners petition for a writ of certiorari and prospective amici's motion to leave to file a brief in this matter both be denied.

Respectfully submitted,

Charlie R. Johnson

Charlie R. Johnson,
Attorney for Respondents

R. B. Hailey

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed, sufficient U. S. postage prepaid, to Margaret B. Waters, P. O. Box 2173, Nogales, Arizona, 85621 and Susan L. Kay and L. Harold Levinson, Vanderbilt School of Law, Nashville, Tennessee, 37240 on this the 6th day of August, 1981.

Charlie R. Johnson

Charlie R. Johnson, Attorney

R. B. Hailey, Attorney

MOTION FILED
JUN 1 1981

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1980

NO. 80-6655

MARGARET B. WATERS,

Petitioner

versus

CONLEY HENDERSON, et al.,

Respondents

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF AMICI CURIAE BLOCH AND LEVINSON

L. Harold Levinson
(counsel of record)
Susan L. Kay
Vanderbilt Law School
Nashville, Tennessee
Telephone: 615-322-6630
Attorneys for
Amici Curiae

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1980

No. 80-6655

MARGARET B. WATERS,

Petitioner

versus

CONLEY HENDERSON, et al.,

Respondents

MOTION FOR LEAVE TO FILE BRIEF
AS AMICI CURIAE

L. Harold Levinson and Frank S. Bloch, faculty members of Vanderbilt University School of Law, move this Court, pursuant to Rule 36 of the Rules of Supreme Court, for permission to file a brief and to appear in this case as amici curiae.

Applicant Frank S. Bloch is an Associate Professor of Law and Director of Clinical Legal Education at Vanderbilt. Applicant L. Harold Levinson is a Professor of Law who teaches the course on Professional Responsibility at Vanderbilt. Amici do not represent either party in the litigation, nor do they represent Vanderbilt School of Law. Their interest in this case is that it raises an issue which is important to the administration of justice and to the practice of law: Whether a litigant is denied due process when opposing counsel is a judge who presides over other cases in the court in which the case is tried.

Petitioner Waters has filed a document entitled a "Jurisdictional Statement" in this Court. Prospective amici would ask that the Court consider it as a Petition for Writ of Certiorari to the Tennessee Supreme Court.[1] This document, filed pro se, raises the issue which prospective amici expand on and analyze in their brief.

Because Petitioner Waters has filed her petition pro se, prospective amici would offer any further services this Court may request.

Petitioner Waters has no objection to the filing of a brief by amici in this case.

---

1. Consequently, prospective amici will refer to Ms. Waters as "Petitioner" and to her document as a "Petition for Certiorari."

Respectfully submitted,

SUSAN L. KAY*

L. HAROLD LEVINSON**
Attorneys for Amici Curiae
Vanderbilt Law School
Nashville, Tennessee 37240
(615) 322-2615

*Admitted to practice in Tennessee; not admitted to practice in the United States Supreme Court.

**Admitted to practice in the United States Supreme Court, Florida and New York; not admitted to practice in Tennessee.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed, U.S. postage prepaid, to Charles Johnson, 148 Court Avenue, Sevierville, Tennessee 37866, attorney for Respondents, Margaret B. Waters, P.O. Box 2713, Nogales, Arizona 85621, and Honorable William Leech, Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219, on this the 30 day of May, 1981.

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1980

No. 80-6655

MARGARET B. WATERS,

Petitioner

versus

CONLEY HENDERSON, et al.,

Respondents

BRIEF OF AMICI CURIAE

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QUESTION PRESENTED

Whether a litigant is denied due process when opposing counsel is a judge who presides over other cases in the court in which the case is tried.

STATEMENT OF CASE [1]

Early in 1971, Petitioner Margaret B. Waters filed a complaint in Sevier County Chancery Court[2] seeking to quiet title to a farm located in that county. After taking the oath of office as Chancellor[3] of the Chancery district which includes Sevier County on February 15, 1971, Earl Hendry filed an answer to petitioner's complaint on March 15, 1971, as counsel for the defendants and continued to represent them during the litigation, including personal presentation of argument in trial and appellate courts. Defendants prevailed at trial and on appeal.

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1. Amici wish to highlight the facts and events pertinent to the issue which they raise in their brief. Many of the dates and events have been taken from Petitioner Waters' petition.

2. Tennessee Chancery Courts are trial Courts of general civil and equitable jurisdiction T.C.A. §§16-11-102; 16-11-103.

3. Chancellors are the judges of Tennessee's Chancery Courts. There is only one Chancellor for the Chancery District which includes Sevier County.

On August 18, 1978, the defendants in the former action sought a temporary restraining order to restrain Petitioner Waters, inter alia, from making any assertions claiming any interest in the Sevier County property, from publishing any documents with relation to the property and from occupying or attempting to occupy the property. They were represented in this case by Attorney Charlie Johnson. Petitioner filed her answer on August 29, 1979. One of her defenses was that the original judgment was void due to the violation of due process inherent in Earl Hendry's representation of the opposing party after Hendry had become Chancellor. On September 26, 1979, the Court made the temporary restraining order a permanent injunction. On February 8, 1980, Petitioner Waters filed a Motion for Relief from the judgment; it was subsequently denied by the trial court. Petitioner appealed and on October 3, 1980, the Tennessee Court of

Appeals affirmed the decision. The petition for rehearing filed on October 10, 1980 was denied on October 21, 1980.

Petitioner filed for permission to appeal to the Tennessee Supreme Court on November 19, 1980. Prospective amici in this case filed for permission to appear as amici in the Tennessee Supreme Court on December 23, 1980. The petition to appear as amici was denied on January 30, 1981; permission to appeal was denied on March 16, 1981. Petitioner Waters filed her "Jurisdictional Statement" in this Court on April 30, 1981.

REASON FOR GRANTING THE WRIT

I.

Whether a litigant is denied due process when opposing counsel is a judge who presides over other cases in the court in which the case is tried.

This Court has not decided whether and to what extent judges may practice law without depriving the opposing litigant of Due Process of law. The general topic of the practice of law by judges has been addressed in several different ways by the various states and federal government.

The strongest prohibition against judges practicing law is found in Title 28 of the United States Code, §454 which provides:

> "Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor."

The Montana Supreme Court has interpreted this provision as operating to terminate

any pre-existing attorney-client relationship when the attorney becomes a federal judge. Endre se v. Van Vleet, 118 Mont. 533, 169 P.2d 719 (1946).

The constitutions and statutes of many states include an absolute prohibition against judges practicing law.[4] And although Illinois has no statutory or Constitutional prohibition against such practice, the Illinois Supreme Court has held that the practice of law by a judge "in or out of Court, directly or indirectly, is incompatible with his

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4. The California and Washington constitutions provide typical examples of absolute prohibitions. California Constitution Article 6, Section 18 states: "No justice or judge of a court of record shall practice law." The Washington Constitution, Article 4, Section 19 states: "No judge of a court of record shall practice law in any court of this state during his continuance in office." An example of a statute prohibiting practice by a judge is found in Alabama which penalizes judges who practice law. The penalty of a fine between $100 and $1,000 may be imposed for violation of the prohibition. Code of Alabama, Section 34-3-11.

judicial responsibilities and duties and contrary to public policy." Bassi v. Langloss, 22 Ill.2d 190, 174 N.E.2d 682, 684 (1961).[5]

One exception to the prohibition against the practice of law by judges is sometimes found, allowing newly appointed judges to wind down matters which they began prior to taking judicial office. This exception is judicially created in some jurisdictions and statutorily created in others. Michigan presents one example of the former category. Although a Michigan statute specifically precludes judges from practicing at all, it has been interpreted by the Michigan Supreme Court so as to allow winding down of a practice. Nonethe-

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5. This opinion is typical of those found in several other jurisdictions. In re Investigation of Circuit Judge of 11th Judicial Circuit, 93 So.2d 601 (Fla. 1957); Perry v. Bush, 46 Fla. 242, 35 So.225 (1903); Schnackenberg v. Towle, 4 Ill.2d 561, 123 N.E.2d 817 (1955), Cert. den. 349 U.S. 939 (1955); In re Kenton County Bar Ass'n., 314 Ky. 664, 236 S.W.2d 906 (1951); Collins v. Godfrey, 324 Mass. 574, 87 N.E.2d 838 (1949); Eden v. Beaman, 167 Okla. 525, 30 P.2d 899 (1934).

less, the Court was specific in stating that such winding down could not include litigation. In Matter of Ryman, 394 Mich. 637, 232 N.W.2d 178 (1975). A similar interpretation could be read into American Bar Association's Code of Judicial Conduct. Canon 5, F of the Code prohibits full time judges from practicing law. However, a schedule to the Code of Judicial Conduct, entitled "Effective Date of Compliance," requires every person to whom the Code becomes applicable to "arrange his affairs as soon as reasonably possible to comply with it." The Reporter's Notes add: "For some activities, such as services on the Board of an organization likely to be litigating before a judge, a reasonable time may be only the short time needed to write a letter of resignation; a reasonable time for disposing of securities or other financial interest could be a much longer period." E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct

104 (American Bar Association, 1973.) Depending on how broadly the Reporter's comments are construed, winding down of a practice could be allowed for at least a short period of time, but there is no indication that the Code would permit a judge to function as litigating counsel during the winding down of a law practice.

By statute, Tennessee allows winding down by a newly appointed or elected judge. T.C.A. §17-105. In the case now before this Court, the Tennessee Court of Appeals interpreted the statute as allowing a newly appointed or elected judge to function as litigating counsel, either in his own court or in another court in the State of Tennessee.

The Tennessee court's interpretation is contrary to the generally held view that a judge may not function as litigating counsel at all, even while winding down a practice, and especially not in his own court. See, e.g., In Matter of Ryman, 394 Mich. 637, 232 N.W.2d

178 (1975). Cady v. Lang, 95 Vt. 287, 115 A. 140 (1921), held that even in the absence of a statute so providing, a judge may not act as an attorney in a case before the court of which he is a member. Without a controlling statute, Prichard v. United States, 181 F.2d 326 (6th Cir. 1950), aff'd, 339 U.S. 974 (1950), held that it was morally if not legally impossible for a judge to enter an attorney client relationship with the person being investigated by a grand jury over which he presided. It was held to be a reversible error in Wood v. Keith, 60 Ark. 425, 30 S.W. 756 (1895) for a judge to appear as counsel in his own court. The court found such a rule necessary to protect the judge from the influences encountered by attorneys which might destroy impartiality of judgment and to protect the court from the undue influence of one who normally presides as judge. It was held grounds for disbarment when an attorney prac-

ticed law in his own court during tenure as county judge, State ex rel. Nebraska State Bar Association v. Wiebusch, 153 Neb. 583, 45 N.W. 2d 583 (1951). Even under the exception allowing a part time judge to practice law, Young v. Grauman, 278 Ky. 197, 128 S.W.2d 549 (1939) held that such judges must be barred from practicing in their own courts.

In a recent case, a Texas court held that a decision of the Texas Optometry Board had to be reversed because two members of the Board acted as investigators and presented all the evidence to the Board. Although the two members did not sit on the panel, the Court held that their advocacy in front of their colleagues engendered an unacceptable and intolerable risk of bias and unfair adjudication. Rogers v. Texas Optometry Board, 609 S.W.2d 248 (Tex. Civ. App. 1980).

Petitioners respectfully urge this court to rule that a judge's appearance as counsel in

his own court denies the opposing party due process of law. A fair and impartial trial is a fundamental requirement of due process. This cannot be assured when there exists the possibility that counsel for one party will unduly influence the judge as a result of his professional or personal relationship with that judge. An unacceptable risk of such influence exists when the judge of a court appears as counsel before another judge in that court. Indeed, in any court in the state, a Chancellor is likely to receive a certain deference not accorded to the opposing counsel. In his own court, where he is accustomed to sharing at least equal authority with the judge hearing the case, this effect is strengthened. Even if only on a subconscious level, this relationship inevitably affects the judge's impartiality. More importantly, the litigant is entitled to be free of any doubts as to the judge's impartiality. As

this Court stated in In Re Murchison, 349 U.S. 133, at 136 (1955):

> A fair trial and a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.

This Court has long shown such awareness of the necessity of an impartial judge to secure due process. In Tumey v. Ohio, 273 U.S. 510 (1927), this Court held that it was a violation of due process for the magistrate to have a direct personal interest in the conviction of the defendant, for whatever the evidence against him, the accused had the right to have an impartial judge. More recently, in Gibson v. Berryhill, 411 U.S. 564 (1973), this Court found a violation of due process when a board of licensed optometrists stood to benefit from the revocation of the licenses of a group of optometrists within their state.

We note that the client of a newly appointed judge will suffer from loss of his counsel, if this Court adopts the position that we urge, but this loss is outweighed by significant and unacceptable risks of bias and of unfair adjudication inherent in the judge's participation, as litigating counsel, in his own court.

CONCLUSION

In view of the considerations set forth above, amici respectfully request that the petitioner's petition for a writ of certiorari be granted.

Respectfully submitted,

SUSAN L. KAY

L. HAROLD LEVINSON
Vanderbilt School of Law
Nashville, Tennessee 37240
Attorneys for Amici Curiae*

*This brief was prepared with the assistance of Vanderbilt law students Nancy Brock and Jay Silver.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed, U.S. postage prepaid, to Charles Johnson, 148 Court Avenue, Sevierville, Tennessee 37866, attorney for Respondents, Margaret B. Waters, P.O. Box 2173 Nogales, Arizona 85621, and Honorable William Leech, Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219, on this the 30 day of May, 1981.